UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

TABERNA CAPITAL MANAGEMENT, LLC, Plaintiff, - against - SIDNEY B. DUNMORE, MICHAEL A. KANE, and DHI DEVELOPMENT f/k/a DUNMORE HOMES, LLC, Defendants.	:	District Court Case No.: 08 CV 1817 [JSR]

REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF SIDNEY B. DUNMORE'S MOTION TO: (1) DISMISS THE COMPLAINT DUE TO THE AUTOMATIC STAY OR DUE TO PLAINTIFF'S LACK OF STANDING; (2) DISMISS THE COMPLAINT PURSUANT TO F.R.C.P. 12(b)(6); OR IN THE ALTERNATIVE, (3) FOR A MORE DEFINITE STATEMENT OF FACTS PURSUANT TO F.R.C.P. 12(e)

Pursuant to Federal Rule of Evidence 201, defendant Sidney B. Dunmore ("Dunmore"), by and through his undersigned attorneys, files this Request for Judicial Notice of the following pleadings of record and other documents set forth below on the grounds that they constitute records capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned, in support of Dunmore's Motion To (1) Dismiss the Complaint Due to the Automatic Stay or Due to Plaintiff's Lack of Standing; (2) Dismiss the Complaint Pursuant to FRCP 12(b)(6); Or In The Alternative, (3) For a More Definite Statement of Facts Pursuant to FRCP 12(e):

1. The Transcript of the Hearing Before the Honorable Martin Glenn United States Bankruptcy Court Judge dated November 16, 2007, a true and correct copy of which is attached hereto as Exhibit "A" and is incorporated herein by this reference and made a part hereof.

Dated: May 1, 2008

LEVENE, NEALE, BENDER, RANKIN & BRILL L.L.P.

By: /s/ Beth Ann R. Young

Beth Ann R. Young (CA State Bar No. 143945) (Pro Hac Vice)
Michelle Sharoni Grimberg (CA State Bar No. 217327) (Pro Hac Vice)

10250 Constellation Boulevard, Suite 1700
Los Angeles, California 90067
Telephone: (310) 229-1234
Facsimile: (310) 229-1244

Attorneys for Defendant Sidney B. Dunmore

EXHIBIT A

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE:	. Case No. 07-13533
	.
	.
DUNMORE HOMES, INC.,	.
	. One Bowling Green
	. New York, NY 10004
Debtor.	.
	. November 16, 2007
. . . . .	. 10:00 a.m.

TRANSCRIPT OF HEARING
BEFORE HONORABLE MARTIN GLENN
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

For the Debtor:	Pachulski, Stang, Ziehl & Jones By: DEBRA GRASSGREEN, ESQ. 150 California Street 15th Floor San Francisco, CA 94111
	Pachulski, Stang, Ziehl & Jones By: MARIA A. BOVE, ESQ. 780 Third Avenue 36th Floor New York, NY 10017
	Palumbo Bergstron, LLP By: KEVIN MEADE, ESQ. 17901 Von Karman Avenue Suite 500 Irvine, CA 92614 (Telephonic Appearance)
For RBC Contura Bank:	Bryan Cave, LLP By: MICHELLE McMAHON, ESQ. 1290 Avenue of the Americas New York, NY 10104
Audio Operator:	Kevin Su

Proceedings recorded by electronic sound recording, transcript produced by transcription service.

J&J COURT TRANSCRIBERS, INC.
268 Evergreen Avenue
Hamilton, New Jersey 08619
E-mail: jjcourt@optonline.net

(609) 586-2311 Fax No. (609) 587-3599

APPEARANCES: (Cont'd)

For the U.S. Trustee:	Office of the U.S. Trustee By: RICHARD C. MORRISSEY, ESQ. 33 Whitehall Street 21st Floor New York, NY 10004
For Weyerhaeuser Realty Investors, Inc., et al:	Lowenstein Sandler, PC By: KENNETH A. ROSEN, ESQ. BRUCE BUECHLER, ESQ. DAVID M. BANKER, ESQ. 1251 Avenue of the Americas New York, NY 10020
For IndyMac Bank:	Orrick, Herrington & Sutcliffe, LLP By: ALYSSA D. ENGLUND, ESQ. 666 Fifth Avenue New York, NY 10103
For Guaranty Bank:	Pillsbury, Winthrop, Shaw & Pittman, LLP By: RICK B. ANTONOFF, ESQ. 1540 Broadway New York, NY 10036 Seward & Kissel, LLP By: JOHN R. ASHMEAD, ESQ. One Battery Park Plaza New York, NY 10004
For The Aleco Corp.:	Klein, DeNatale, Goldner, Cooper, Rosenlieb & Kimball, LLP By: THOMAS SCOTT BELDEN, ESQ. 4550 California Avenue 2nd Floor Bakersfield, CA 93309 (Telephonic Appearance)
For Newmeyer & Dillion, LLP:	Newmeyer & Dillion, LLP By: ALAN H. PACKER, ESQ. 1333 N. California Boulevard Suite 440 Walnut Creek, CA 94596 (Telephonic Appearance)

APPEARANCES: (Cont'd)

For Kay Bank National	Kaye Scholer By: MARC COHEN, ESQ. 1999 Avenue of the Stars Suite 1700 Los Angeles, CA 90067 (Telephonic Appearance)
For Wachovia Bank:	Rutan & Tucker, LLP By: MARTIN TAYLOR, ESQ. 611 Anton Boulevard Suite 1400 Costa Mesa, CA 92626 (Telephonic Appearance)
For SGN Construction, Inc. & Vaca Valley Roofing, Inc.:	Murphy, Austin, Adams & Schoenfeld By: LISA D. NICOLLS, ESQ. 304 S Street Sacramento, CA 95814 (Telephonic Appearance)
For Silar Advisors, LP:	Bryan Cave, LLP By: KATHERINE WINDLER, ESQ. 120 Broadway Suite 300 Santa Monica, CA 90401 (Telephonic Appearance)
For Teichert Construction and Cal Sierra Construction:	Downey Brand By: R. DALE GINTER, ESQ. 555 Capitol Mall 10th Floor Sacramento, CA 95814 (Telephonic Appearance)
For John W. Busby:	John W. Busby, II, Esq. (Telephonic Appearance)
For Hemington Landscape Services:	Hefner, Stark & Marois, LLP By: HOWARD S. NEVINS, ESQ. 2150 River Plaza Drive Suite 450 Sacramento, CA 95833 (Telephonic Appearance)

APPEARANCES: (Cont'd)

For SGN Construction, Inc.:	Parkinson Phinney By: THOMAS PHINNEY, ESQ. 400 Capitol Mall 11th Floor Sacramento, CA 95814 (Telephonic Appearance)
For Mackay & Somps Civil Engineers:	Lombardi, Loper & Conant, LLP By: MATTHEW S. CONANT, ESQ. Lake Merrit Plaza 1999 Harrison Street 26th Floor Oakland, CA 94612 (Telephonic Appearance)
For Affinity Bank:	Frandzel, Robins, Bloom & Csato, L.C. By: CRAIG A. WELIN, ESQ. 6500 Wilshire Boulevard Seventeenth Floor Los Angeles, CA 90048 (Telephonic Appearance)
For Sidney Dunmore:	Levene, Neale, Bender, Rankin, & Brill, LLP By: RON BENDER, ESQ. BETH ANN R. YOUNG, ESQ. 10250 Constellation Boulevard Suite 1700 Los Angeles, CA 90067 (Telephonic Appearance)
For The Silva Gate Contraction:	Law Office of Michael Willcoxon By: MICHAEL WILLCOXON, ESQ. 11555 Dublin Boulevard Suite 201 Dublin, CA 94568 (Telephonic Appearance)

THE COURT: Please be seated.

All right. We're here this morning in Case Number 07-13533, Dunmore Homes, Inc.

Counsel have already made their appearances. The first two motions were the pro hoc vice motions for Debra Grassgreen and Richard Pachulski. Both of those motions are granted.

MS. GRASSGREEN: Thank you, Your Honor.

THE COURT: Counsel, do you want to proceed on behalf of the debtors?

MS. GRASSGREEN: Thank you, Your Honor. Debra Grassgreen of Pachulski, Stang, Ziehl & Jones on behalf of the debtor.

Excuse me, Your Honor. There's quite a --

THE COURT: Sure.

MS. GRASSGREEN: On the podium here. I'm going to rearrange.

Your Honor, maybe just a little bit of housekeeping about how I'd suggest that we proceed today. This is our first hearing in the case and actually the first time that we've appeared before you, Ms. Bove and I, so it's a pleasure to appear before you.

I thought we would start with just a quick introduction and background of what brought Dunmore Homes here and also to spend a few minutes explaining the sale transaction

that happened in September of this year because that's been the subject of a lot of questions by various parties and I think a number of parties that are here today will have questions about that. And then I thought we could run through the agenda. I'm going to suggest that we put the DIP financing last on the agenda because we had made a proposal to resolve the one objection that has been filed and they're waiting to contact their --

THE COURT: All right, that's fine.

MS. GRASSGREEN: So, Your Honor, the intention is that I'll present the debtor-in-possession financing motion and the retention application and Ms. Bove will handle the rest of the motions --

THE COURT: Okay.

MS. GRASSGREEN: -- if that's okay. I'll just give a little bit of background.

Dunmore Homes is a home-builder, land developer whose headquarters are in Northern California in the Sacramento area. It's the parent of 15 operating subsidiaries that collectively operate 26 communities in various stages of development.

We had Exhibit A to the Strauss affidavit. I don't know if you have that handy, Your Honor --

THE COURT: I do.

MS. GRASSGREEN: -- but I do have copies. It's actually --

THE COURT: No, I have it.

MS. GRASSGREEN: -- quite a good cheat sheet for reference to how our structure is, but if you have it handy. As set forth on Exhibit A, each of the rectangular boxes is a separate legal entity.

THE COURT: Actually maybe I'm not looking at the same thing you're looking at.

MS. GRASSGREEN: May I approach, Your Honor?

THE COURT: Sure. Why don't you hand it to one of my law clerks and they'll hand it up.

Do you have another copy for yourself?

MS. GRASSGREEN: We do. And for anyone who's in the courtroom who doesn't.

THE COURT: Actually I do have it now. I'm sorry. I flipped one page too far.

MS. GRASSGREEN: Okay. This makes it a little bit easier to understand what's going on here.

So the debtor is the corporate parent of each of the entities. The entities listed on the left-hand side, each rectangular box is an entity and then inside the box you'll see the name, not the community, a separate housing community. The initials on the side show whether or not there's homes being built. They've been finished and selling. We call it -- we've got vertical construction happening at those properties and some of them are just land and development of our land and on

some of them we have what we call horizontal construction, things like grading and infrastructure and things like that are going on. They're all in various stages of development.

The entities on the right-hand side are separated out and at the top you'll see a note that these are the Weyerhaeuser projects. As to these four entities and the projects listed in these entities, the debtor owns an 85 percent membership interest, and I know Mr. Rosen will have some comments about that. But the interest was 85 percent and Weyerhaeuser has a 15 percent equity interest. So that is why that is there.

And then the ovals in the middle and the arrows show you which lenders have lent to each entity and in some cases within an entity a lender has lent to one project or community and lent to a different one. So but this is all at the subsidiary level and generally speaking Dunmore Homes, the parent, is either a guarantor or a co-borrower. The obligation is to each of the lenders. So it's just a quick little summary of how that works.

So the primary asset of this estate, because the subsidiaries are not currently in bankruptcy proceedings, is the debtor's interest in the subsidiaries. There are a couple other assets of this estate, and I'll go through them because they will bear on the cash collateral and the DIP financing when we get to it and just an idea of where we are.

There's 160 acres of what we call mitigation property. This is land that is required to be held and not developed to mitigate environ impacts and other developments. And we are working on a sale of that property. It's in the Sacramento area.

There's also an option to purchase 20 acres of land adjacent to our Wild (indiscernible) project. So that's in the Hyland, LLC is where that option is. We called that in our papers the Fadano option. The option is exercisable, I believe, in 2013 but there's a life of state on that property. It could be exercisable earlier if the woman passes. And I believe she's close to a hundred years old so it's possible that option could be exercisable sooner depending on the state of her health.

We have a little bit of unrestricted cash. We had $120,000 when we filed and we've got $350,000 that are in CD's that are held for the benefit of the City of Fresno in connection with a development bond. And we're not acknowledging that those are restricted in any way. We're looking at them. At the moment we're not authority asking to use them in any way. They're going to just stay where they are.

And in connection with our cash management system, we're communicating with the U.S. Trustee whether they require any kind of motion vis-a-vis those. That's special

information.

There's also, Your Honor, an interest in a deferred compensation fund. There's a Rabbi trust that has about a million seven that provides that upon an insolvency the assets are held for the benefit of the general creditors and that -- subject to general creditors -- and we are working out a stipulation with the Trustee of that trust for turnover of those funds to the estate and we expect to file that hopefully in the next week or so.

And then there is a note from Mr. Dunmore that was in the approximate amount of $11 million as of the petition date. And a receivable from Dunmore Land in the amount of about $350,000.

So if you add all of that up, we've got other assets other than the interest in the communities that we think the value is between five and a half and $6 million.

THE COURT: What was the origin of the $11.1 million receivable from Mr. Dunmore?

MS. GRASSGREEN: Mr. Dunmore had a revolving note agreement with the company that went back many years. At one point I think the original balance was $25 million and it was paid down over time to 11 million. But it was in place for a number of years.

THE COURT: All right.

MS. GRASSGREEN: Collectively the lenders in the

center boxes here are owed about $200 million. And we've set forth in detail in our papers the specific amount just so you can get an idea of where the principal debt is.

I failed to mention, on the mitigation property there is a first lien on that in the amount of a million and a half dollars but we believe the value is -- there's value in excess of that lien of an additional 2.8 based on the offer that we're currently negotiating.

As I mentioned, all of the secured lenders are secured by the property at the subsidiary level. And again, those entities are not in bankruptcy and they generally have claims against Dunmore Homes which are unsecured claims based on their guarantee because Dunmore Homes was a co-borrower under certain of the agreements.

In addition, a number of these contractors and subcontractors who perform work at the subsidiary level have either direct claims or guarantee claims that they are asserting against Dunmore Homes. Many of the subcontractor agreements were under master agreements with Dunmore Homes and they performed services for various subsidiaries. In other cases Dunmore Homes acted as an agent on behalf of the subsidiaries.

So we have listed on our list of 20 largest creditors a number of subcontractors. Those primarily perform services at the subsidiary level. And many of them do have mechanics

liens and claims against surety bonds.

The cause of the bankruptcy, Your Honor, like many other home-builders around the country, particularly home-builders such as Dunmore Homes whose customers were first-time buyers or move-ups was there was a slow-down starting at the end of 2006 but the credit crunch and sub-prime ministry this summer caused a tremendous decrease in sales because first-time home-buyers and first-time move-ups often look to the sub-prime loans for their financing. And, in fact, many customers that we think would have been buying homes today were able to buy homes a year or two ago and so the customers from yesterday have been taken from today and the sales have completely dropped off.

So in August Dunmore Homes stopped building homes. They shut down their home-building operations. That was before any restructuring advisors came in. Alvarez & Marsal in our firm came in in the middle of August after the operations had been shut down and the company was in a severe liquidity crisis. They had enough cash to possibly operate for another 60 days and immediately Alvarez & Marsal in our firm put together an analysis on a project-by-project basis and sat down one-on-one over the course of four days with each of our lenders. And then we followed that up with a global meeting and what came out of those meetings was that an internal restructuring where the lenders continued to contribute funds

and perhaps had to modify -- contribute additional funds over what was committed was not something that was terribly attractive to the lenders given the current environment in the home-building industry. And that they were interested in understanding if there was a third-party investor that might come in after some sort of a transaction.

And so at that time we engaged the portion of Alvarez & Marsal that does the transactional work, the M&A side, Alvarez & Marsal Corporate Finance, and they went out and they've been running a process to try find a third-party investor. We've described that quite a bit in our papers and I'll be happy to answer any questions about it.

This is going to be a really quick case, Your Honor. Either that transaction is going to come to fruition and we're going to know that we've really got something in the next 30 days, or we're going to just do an orderly wind-down. There really are no other options than that given the current situation in the home-building market and the decreased sales. So we do not expect to be here this time next year, Your Honor. We think that this is a very quick case.

The reason for the filing. We've been trying very hard to do this as an out-of-court restructuring. We did not believe necessarily that the bankruptcy was necessary other than for defensive reasons. As it turned out a writ of attachment was issued. It was pursuant to a tentative ruling

going to be issued against Dunmore Homes brought by Calsiera who's one of our largest contractor creditors and that restricted our ability to obtain liquidity and Mr. Dunmore was willing to lend money in a bankruptcy proceeding under a DIP authority. So that was what necessitated the filing. We're trying very hard to keep the subsidiaries out, but we really don't know at this time whether or not we'll have to file for the subsidiaries.

So I don't know if there's any questions about the background. I did want to spend just a little bit of time on the sale transaction.

THE COURT: Yes, please.

MS. GRASSGREEN: Your Honor, on September 10th, 2007, Dunmore California that was wholly owned by Sid Dunmore sold all of its assets. So the California holding company sold its interest in subsidiaries and the other assets that I described to a new company that was formed that's owned by a gentleman named Michael Cane who's a Sacramento businessman for an assumption of all liabilities and $500.

When Dunmore sold all of its assets, Mr. Dunmore paid from his personal funds, I'm advised, approximately $280,000 to Michael Cane. The sale created a taxable event and the taxable event allowed Mr. Dunmore to realize the losses, carry the losses back to the year 2005 when he paid a lot of taxes and things were good in the home-building industry. And we expect

it to generate a tax refund that could be as much as $15 million.

In connection with that, we secured the previously unsecured note from Mr. Dunmore to the, you know, to Dunmore California, now to Dunmore New York, by the tax refund. So the sale created an asset and then posted that asset as security to increase the assets from the estate. A number of creditors have argued that this could be a fraudulent conveyance. We don't believe creditors are harmed in any way. In fact, we think this benefits everybody because if this transaction didn't happen, if there is no taxable event that would allow Mr. Dunmore to realize a loss, there would be no tax refund. And that tax refund is going to be used either to pay, you know, to go to Dunmore Homes and be distributed, or to pay joint creditors to which he's guaranteed to the extent it exceeds the amount of the note or if he has claims of offset to reimburse him for that.

So that really is the history of the sale, Your Honor. There was a legitimate purpose, business purpose for the sale, because it needed to be done in the year 2007 in order to create a taxable event. All the advisors who looked at it informed us that there is absolutely nothing wrong with creating a taxable event. It's the same thing as when I decide to sell my stock at the end of the year to take a loss, offsets and gains, by having another transaction. And we've been very

transparent about the transaction with any creditors who've asked. We shared it completely with all the lenders and provided them all the documents. Several of the contractor creditors have asked for copies of the asset purchase agreement and related documents and we've provided it to them and we'll be happy to spend time with whoever has questions about it.

We recognize that on its face it appears unusual but we believe there's a legitimate explanation.

When we did the transaction we -- as I mentioned, we entered into a note modification agreement that added the tax refund as security for the note. We also set up an ADR procedure for the assertion of setoff claims and we modified the due date of the note. The note was due December '08 and it was modified to be due the earlier receipt of the tax refund or December '09.

You'll hear later under the DIP that we've modified that again so that it would be earlier, 15 days after the tax refund or December '09. And we've collapsed some of the time periods within which Mr. Dunmore can assert an offset, and I'll review that later.

That really is the end of my introductory remarks, Your Honor, unless you have any questions.

THE COURT: I don't for now. We'll undoubtedly have questions when we get to some of the specific motions.

MS. GRASSGREEN: Thank you, Your Honor.

THE COURT: Thank you very much, Ms. Grassgreen.

MS. GRASSGREEN: I will then defer to my colleague, Ms. Bove, to present the rest of the motions and we'll check in as to where we are.

THE COURT: Okay.

MS. BOVE: Good morning, Your Honor.

THE COURT: Good morning.

MS. BOVE: Maria Bove of Pachulski, Stang, Ziehl & Jones for the debtor.

I don't know if Your Honor was able to get a copy of the amended agenda that we filed this morning.

THE COURT: Let me see whether I -- does it say amended agenda?

MS. BOVE: It --

THE COURT: It just says agenda.

MS. BOVE: It just says agenda, right.

THE COURT: Yes, I have it.

MS. BOVE: Okay. So I propose to skip the DIP motion and then move to B, which is our -- the debtor's motion to establish case management procedures.

THE COURT: Yes.

MS. BOVE: And we have made the modifications requested by Your Honor. And I submitted a black line of the order reflecting those changes to Your Honor's law clerk this morning.

THE COURT: Yes. And I have that.

Let's just talk briefly about -- and in general I like the case management order -- depending on how many hearings you're going to need, you're going to find out that one difficulty we have is I don't have my own courtroom, it's under construction.

MS. BOVE: Right.

THE COURT: And I'm somewhat at the mercy of my colleagues for obtaining a courtroom.

MS. BOVE: I understand.

THE COURT: And so I haven't -- I tried to fill in all of the dates that you have on Page 11 of the order.

MS. BOVE: Okay.

THE COURT: So far unsuccessfully. The other objective I would like to accomplish. I know there are a lot of lawyers on the telephone. I think many from California. And I'm mindful that 10:00 a.m. hearings are 7:00 a.m. in California. And so depending on the length of the agenda, I would propose, if possible, either to start at 11:00 a.m. on days when there is a full agenda for omnibus motions and where it's anticipated that there will be fewer motions even starting it at two o'clock during the afternoon to accommodate people participating by telephone.

I guess also I know, Ms. Bove, you're from New York. Ms. Grassgreen, you're from California.

MS. BOVE: Correct.

MS. GRASSGREEN: But I'm often in all of our offices.

THE COURT: All right. You know, all things being equal, I would prefer not to schedule Friday hearings because for those people who have to fly back to California it's a real pain to have to fly back on a Friday afternoon. I never have problems getting a courtroom on a Friday. Thursdays can be a problem, at least until my courtroom is done.

So, you know, that's a little bit of a dilemma. And working through the time sequence and the, you know, I appreciate the longer time sequence for motions than what our rules provide. It's really inadequate.

So, you know, assuming the 17 days rather than the 14 days -- assuming some things you have to get served by mail, you know, in an ideal world the schedule that I looked at would have essentially, you know, motions would be filed on a Monday. The objections would be due on a Thursday. The reply on a Tuesday and the hearings on Thursday. But right now I'm having, still having challenged in getting courtrooms.

So, we can talk about -- well, I'll raise it right now. And I also, given the number of counsel involved and they're being spread out, I'd like to minimize the number of hearings. So I agree with setting up omnibus days. Subject to your thoughts on this, I would propose that the next hearing be on Friday, December 14th.

MS. BOVE: That's what we, I think, intended to ask for.

THE COURT: Okay. And that I have. I think it's this courtroom on Friday, December 14th. And soon we'll see what happens with the DIP motion. But assuming the interim order is approved, a final hearing would -- on the DIP -- and a final hearing on retention assuming the initial applications are granted. All of that would be on Friday, December 14th.

MS. BOVE: That would be great, Your Honor.

THE COURT: And, you know, I would -- I don't know whether you anticipate a lot of additional motion practice for that day.

MS. BOVE: Not right now, Your Honor. I think just the motion to approve the stipulation with respect to the deferred compensation fund. I think that's something we have on our agenda that we'd like, too.

THE COURT: All right. And I know on the agenda for today is the issue of the retention of Alvarez. And just before coming on the bench -- I gather we have it on for a status today and the proposal is to have a hearing next week and I think that we have a courtroom for Tuesday afternoon at two o'clock assuming you're able to work out issues with respect to it. And I do have some issues I'm going to raise with you about it.

So in any event -- but what I would like to do is

despite the fact that I've scheduled the next hearing for Friday -- or we will schedule Friday, December 14th at 11 o'clock, I'd like to run the clock for filing of motions, objections and replies instead with -- actually it's going to add a day because as if it were being done on Thursday. So in other words, the last day for filing motions assuming the 17-day period would apply would be Monday, November 26th. The deadline for objections would be Thursday, December 6th. The deadline for reply would be Tuesday, December 11th. Right now the hearing probably will have to go forward on Friday, December 14th. So I probably have -- and I'll enter an order that sets these dates because it will differ from your calculation of 17 days or 14 days before the hearing and --

MS. BOVE: Okay. That will be helpful.

THE COURT: Okay. And as to the other dates, my courtroom deputy is still working on trying to get them. It may be that the December, January and February hearings have to occur on Friday. We'll see, but my courtroom is actually supposed to be ready in early March. So we'll see. After that I have more control over it. But I think that was -- you made the change and for those who haven't seen it I have some specifics on the lengths of briefs and courtesy copies and that's been added in the black line order which I reviewed shortly before taking the bench.

So the case management and administrative procedures

motion is granted. But as I say, I will enter a separate order setting this hearing -- at least the first hearing -- for December 14th with the dates slightly adjusted on filing motions.

MS. BOVE: Okay. Thank you, Your Honor.

THE COURT: I take it there were no objections filed. Does anybody in the courtroom have any objections to the case management procedures order?

All right. So that motion is granted.

MS. BOVE: Thank you, Your Honor.

Moving on to letter C which is Tab 5 in our binder. The debtor's motion for an extension of time to file schedules and statements. We had originally asked for 45 days beyond the 15-day period. But after consultation with the U.S. Trustee we agreed to reduce the extension by about 27 days beyond the 15-day period. And that will bring us to December 20th, 2007. And I have modified the order to reflect that and I put it in the black line.

THE COURT: And I've seen that.

Mr. Morrissey, is that date acceptable?

MR. MORRISSEY: Your Honor, it is.

Just for the record, Richard Morrissey for the U.S. Trustee.

As Ms. Bove has stated, we did go a little bit back and forth with this and finally settled on December 20th

because we didn't believe that it was either necessary or in my view appropriate to keep the creditors waiting for four times the statutory number of days for the filing of schedules.

THE COURT: All right. So with the change to December 20th, that motion is granted.

MS. BOVE: Thank you, Your Honor.

Moving on to the next motion which is letter D in the agenda and Tab 6 in our binder. It's the debtor's motion to approve payment of pre-petition wages and related amounts and to continue its benefits programs post-petition.

Your Honor, by this motion the debtor requests that it be permitted to pay certain wages that accrued pre-petition but remained unpaid as of the petition date and to continue its benefit program.

In compliance with Your Honor's request, on Wednesday we submitted to chambers a list of pre-petition wages the debtor seeks authority to pay. We also provided a copy of that schedule to the U.S. Trustee.

As Your Honor will see on that schedule, no individual will be paid more than the maximum 10,950 amount permitted under Section 507(a)(4) of the Code with respect to priority. And the maximum aggregate amount the debtor seeks to pay for pre-petition wages and expense reimbursements is $63,421.

THE COURT: Let me ask you. One question I had was

whether there were any amounts you proposed to pay for pre-petition workers compensation premiums?

MS. BOVE: Well, Your Honor, that was one clarification that I wanted to make. When we filed the motion, the debtor's management had not been able to reconcile what happened in the couple days before the petition date and the time when the pre-petition accounts were closed in order to open the post-petition DIP accounts.

It turns out yesterday, I believe, upon reconciliation the debtor discovered that workers comp premiums in the amount of $1,044 remained unpaid as of the petition date. A check had been cut but it had not cleared before the pre-petition accounts were closed.

Candidly, Your Honor, I was not going to request authority to pay that amount due to the Supreme Court precedent.

THE COURT: It's Howard Delivery Services.

MS. BOVE: Um-hmm. So unfortunately we didn't -- we hadn't discovered it and it was intended to be paid but unfortunately with the intervening bankruptcy and the closing of the accounts the amount did not clear.

THE COURT: Mr. Morrissey, do you want to be heard on that $1,000 amount?

MR. MORRISSEY: Your Honor, we did discuss this order generally and the $1,000 specifically in a telephone

conversation yesterday and my general concern about this kind of order is allowing the Committee to get a crack at it, but there were a couple of other small issues, too, involving things like gym memberships which --

THE COURT: I noticed the gym memberships.

MR. MORRISSEY: Yes. But due to the de minimus amount, I did not wish to lodge an objection.

THE COURT: All right. Thank you, Mr. Morrissey.

Given the U.S. Trustee's position, the motion will be granted.

MS. BOVE: Thank you, Your Honor.

Moving to our next motion which is letter E on the agenda and Tab 9 of our binder. It's the motion of the debtor to prohibit utilities from discontinuing services providing deposits as adequate assurance of future payment and setting up a procedure pursuant to which utilities can request additional adequate assurance. By this motion simply the debtor requests this relief to avoid any disruption in utility services provided to the debtor.

THE COURT: Ms. Bove, the question I had on this motion is that unlike Judge Bernstein in Music Land or Judge Lifland in Dana, they had provided an opt-out procedure. My concern is that under I guess 366 the utility has a statutory right to cut off utilities after the 30-day period and because you didn't provide for the opt-out, you extend your rights

beyond the 30 days. That was my one concern.

MS. BOVE: Perhaps we can address that by shortening the time frames in the procedures.

THE COURT: Either that or adopt the opt-out provisions that Judges Bernstein and Lifland -- I know Judge Lifland put it in Dana I believe.

MS. BOVE: Correct. Well, Your Honor, let me suggest this. I believe it probably would be more appropriate to follow Your Honor's suggestion and add the opt-out procedure. So I will do that and then --

THE COURT: I'm going to conditionally grant the motion --

MS. BOVE: Okay.

THE COURT: -- on the understanding that you'll resubmit the order essentially conforming it to what Judge Lifland did in Dana with the opt-out provision.

MS. BOVE: Okay.

THE COURT: And when we get that -- because there were no objections.

Mr. Morrissey, do you have a problem with that?

MR. MORRISSEY: Your Honor, again, on the understanding, as I discussed with counsel on numerous of these pleadings, that would be an interim order. The Committee may or may not wish to weigh in on this. And my suggestion, and Ms. Bove thought she would come in, was that this was not

really necessarily a first-day pleading, but we have no objection on the merits.

THE COURT: Okay. Assuming that the opt-out procedure is added, it doesn't seem to me to be controversial at all. I'm not sure what the Committee would -- how the Committee would weigh in on this, Mr. Morrissey.

MR. MORRISSEY: Your Honor, they very well may not. I'm just saying that just to give them the opportunity.

THE COURT: All right. So let's resubmit it as an interim order. We'll take it up on December 14th and I don't -- I'd be surprised if we -- unless the utilities come in and say they don't think two weeks is enough, which they can do anyway. I mean whether it was interim or final, they could do that.

So with that understanding, it will be conditionally granted and we'll receive your revised order. Please share it with Mr. Morrissey --

MS. BOVE: I will, Your Honor.

THE COURT: -- as well. All right?

MS. BOVE: Thank you.

Moving on to our next application which is letter F in the agenda, Tab 7 in the binder. This is the application of the debtor to retain Kurtzman Carson Consultants, LLC. The debtor submitted a copy of the application to the Clerk's Office under its procedures. The Clerk's Office reviewed it

and asked the debtor to make two clarifications, which we did. We filed an amended application yesterday and submitted it to chambers. And I would request that Your Honor enter the order originally submitted which was not changed in connection with the amended application.

THE COURT: All right.

Mr. Morrissey.

MR. MORRISSEY: Your Honor, the U.S. Trustee has no objection. The concern the Clerk has is just to make sure that the business gets shopped around. And as long as that representation is made, the U.S. Trustee certainly has no objection.

MS. BOVE: And that's the clarification that we -- we had made a general statement about that and we clarified it by saying that we had reviewed the --

THE COURT: And I saw that yesterday. The motion is granted.

MS. BOVE: Thank you, Your Honor.

I will turn over the podium now again to Ms. Grassgreen who will present my firm's retention application.

THE COURT: All right. Thank you, Ms. Bove.

MS. BOVE: Thank you, Your Honor.

Oh, and one more thing, Your Honor.

THE COURT: Yes.

MS. BOVE: If we may just hand up all the orders and

the disks at the end of the presentation?

THE COURT: Yes, you can. That's fine.

MS. BOVE: Okay. Thank you.

THE COURT: Thank you very much.

MS. GRASSGREEN: Your Honor, with respect to our firm's employment application, the U.S. Trustee asked -- had some questions and clarifications. A couple other parties had some questions. So if I could just make a few statements on the record that I think would address that.

The first was the U.S. Trustee asked us for some disclosures regarding the percentage of income earned by our firm for worked performed for IndyMac. It's less than 1 percent. Significantly less than 1 percent. And also asked if we were continuing to represent Dunmore California. We were originally engaged, Your Honor, to represent Dunmore California and its subsidiaries and the transaction was already contemplated before we got involved. So our engagement letter specifically provided that following the transaction, we would represent only the Newco that was formed. We didn't know what state that would take, you know, what form it would take at that point.

We also contemplated at that time because the identify of the owner of Newco and the type of entity that would be formed was unknown. It was originally anticipated that in the transaction we would do the restructuring work for

Dunmore California and the subsidiaries. Following the sale we would continue that restructuring work but that in terms of negotiating the transaction, our engagement letter provided specifically that we would represent the successor. As it turned out, Mr. Cane had his own counsel, wanted to use his own counsel, so we did not represent the successor in that transaction. We represented Dunmore California and all our work just followed the assets.

And so we've explained that to the Office of the United States Trustee where I'm not sure if we have yet provided them our engagement letter but we've made that disclosure and we are -- our employment for Dunmore California was terminated upon a closing sale to this debtor.

We have agreed with the Office of the United States Trustee if any issues arise regarding claims between the parent and the subsidiaries that will engage conflict counsel and that if there's a challenge to the sale that would make it given our transactional work on behalf of the sale that would make it inappropriate for us to represent in that capacity, we would also get conflict counsel.

We also agreed with the Office of the United States Trustee that we would apply any post-petition retainer if there is anything left -- which there may not be -- to our first sale. There won't be an evergreen retainer that carries out. Given the de minimus amount, in this case we're willing to

agree to that. On behalf of our firm I'm not agreeing to that in all cases because there are obviously bigger issues there. I'm sure a number of the professionals in the courtroom are well aware of the need to be protected there.

We've also, of course, agreed to abide by all the expense guidelines. The Office of the United States Trustee had some questions about that. And we also confirmed for the U.S. Trustee and other parties and the lenders that we have not ever and do not presently and do not intend to represent either Mr. Dunmore or Dunmore Land Company which is not part of --

THE COURT: I know what that is. Right.

MS. GRASSGREEN: That's a separate entity.

So those were the clarifications on our retention. We are only being engaged on behalf of the parent company in the case but we are performing services for both the parent and the subsidiary. The parent -- all the administrative overhead, all of the employees, everything is at the parent level so we intend to only charge the parent and to seek approval from Your Honor for all of our fees and expenses incurred in connection with the entire restructuring effort in and out of court.

I don't know if there were any other questions.

(Pause)

MR. ROSEN: Good morning, Your Honor. Kenneth A. Rosen, R-o-s-e-n, from Lowenstein Sandler appearing for Weyerhaeuser.

Your Honor recalls on Exhibit A that Ms. Grassgreen referred to, the Weyerhaeuser project listed in the right-hand column. I only stand with regard to at this time the two -- actually it's three -- retention applications, Kurtzman Carson, the Pachulski Stang firm and I guess next would be Alvarez & Marsal.

There is an operating agreement between Dunmore and Weyerhaeuser that governs the nature of that relationship.

As an aside, we believe that the conveyance of the interest, the JV interest in the four Weyerhaeuser entities, was in violation of the operating agreement and is null and void. But we will deal with that in the California court system inasmuch as the automatic stay doesn't apply to any potential or likely litigation between my -- at least as of now -- and if the debtor sought some kind of injunctive relief before this Court, of course we'll deal with it in due course.

We just want to make sure with regard to these professional retention motions that there is not an intent to charge at least our four debtors with any of the fees earned or that may be earned by these professionals. And we don't want anything that happens here today to be deemed consent thereto. In fact, inasmuch as our four entities are not Chapter 11 debtors and are not before this Court, we don't believe that the Court would have the authority at this time to, you know, to permit the what I'll call surcharge to the non-debtors --

THE COURT: Mr. Rosen, the only thing before me is an application for the debtor to retain counsel and I don't see anything anywhere that would affect the issue of whether the debtor can or cannot allocate amounts to its subsidiaries or affiliates. So I mean there's nothing in the motion, or in the interim order, or the proposed final order that deals with that issue, is there?

MR. ROSEN: That's what I was hoping I would hear, Your Honor.

Thank you very much.

THE COURT: Thank you.

Mr. Morrissey, is there anything you want to add?

MS. GRASSGREEN: Your Honor, I just want to respond to one thing. Mr. Rosen raised this issue with me prior to the hearing and I -- just before you very timely took the bench and we hadn't really completed our conversation. But we did provide in our retention papers that if there is an affiliate filing that our retention would automatically be approved in those cases and I did agree with him that we would file a separate employment application so that we could raise those issues at the time. Because as you stated, it was our position that nothing we were doing here today either prohibited or allowed charging anything down to the subsidiaries.

I don't frankly believe that's been the historical practice of these debtors.

THE COURT: Mr. Morrissey, on billing, what is the practice of your office with respect to charging of secretarial overtime? Do you have guidelines on that?

MR. MORRISSEY: Your Honor, we will generally consider secretarial overtime to be part of a firm's overhead. I actually discussed --

THE COURT: I saw that in the application among their charges were for secretarial overtime.

MR. MORRISSEY: Yeah. I mean generally we would oppose that at the time of the fee application -- I'm sorry, Your Honor --

THE COURT: No, no. I was just going to say you shouldn't presume, Ms. Grassgreen, that my approval of the interim or final order when that comes on for a hearing will approve anything in any fee application you submit. I'm not taking a position one way or the other on it only to say -- because I know you're -- in describing your firm's charges, you had indicated that you charge for secretarial overtime and we'll deal with that when fee applications come before the Court. So you shouldn't assume from the fact that it was in your application and that the Court is granting the order on an interim basis today that I'm deciding what is or is not a proper charge. That's all I want to say.

MS. GRASSGREEN: We understand that, Your Honor, and actually my personal practice is to always write off

secretarial overtime in debtor cases so that would be our intention even though it's listed as one of our firm charges, again, not binding on any of my other partners or in any other cases.

THE COURT: I understand.

MS. GRASSGREEN: I'm certainly willing to write off the secretarial overtime in this case.

THE COURT: Okay. I'm not saying whether it would be or not approved. I only want to make clear that --

MS. GRASSGREEN: That's my personal practice in any event.

THE COURT: -- by approving the interim application, don't take comfort --

MS. GRASSGREEN: Yes, Your Honor.

THE COURT: -- that it would be approved.

MS. GRASSGREEN: We understand that.

THE COURT: All right. On that basis the interim -- go ahead, Mr. Morrissey.

MR. MORRISSEY: Your Honor, just so that counsel isn't alarmed, I'm not here to object to the interim retention. Just to make a few points.

One of them is actually related to what Your Honor was talking about in terms of secretarial overtime. There was another item there which was about working meals and we clarified, I hope, with counsel that that doesn't mean that if

you're sitting at your desk eating lunch that the estate pays for your lunch. It has to do with work meetings and things like that and it can be limited. So I kind of fired a shot across about in a similar vein.

THE COURT: All right. The only thing I'm making clear is today nothing is being decided about fee applications.

MR. MORRISSEY: Yes. Yes, that's fine, Your Honor.

Your Honor, back to the IndyMac issue.

THE COURT: Yes.

MR. MORRISSEY: That is a client of the Pachulski firm. Ms. Grassgreen just indicated that they account for less than 1 percent of the firm's revenues. I believe she said it was far less than 1 percent, which is fine, but in the event that the debtor should become adverse to IndyMac in terms of challenging the validity of a lien or a claim, either there would have to be a waiver or there would have to be conflict counsel retained for that purpose as well.

As far as the subsidiaries, it's always foreseeable in the case where a parent files that the subsidiaries could follow even if they have to follow from 3,000 miles away. But I'm certainly satisfied by counsel's representation that there will be a renewal of the firm's retention.

As to the sale transaction. That's something that particularly concerns me and my office in general. We want to make sure that counsel begins on one side of a transaction and

stays on that side. And as counsel put it, she's kind of following the --

THE COURT: Followed the assets.

MR. MORRISSEY: -- money. Following the assets. But again, you know, it's something we'll continue to discuss. I understand there's an agreement, a copy of which I'm to be getting, but I'm going to hold any bullets that I have until the final. But as for this interim application, the U.S. Trustee has no objection.

THE COURT: Thank you, Mr. Morrissey.

Anyone else wish to be heard on the interim application?

All right. Therefore the interim application to retain the Pachulski firm is granted.

MS. GRASSGREEN: Thank you, Your Honor. And for the record, we do have a written waiver from IndyMac. I'm also happy to provide that to Mr. Morrissey.

THE COURT: Thank you.

Are we coming back to the DIP or are we going to talk about the Alvarez -- the status conference on Alvarez.

MS. GRASSGREEN: If we could just briefly talk about Alvarez, Your Honor.

THE COURT: Yes.

MS. GRASSGREEN: We have requested a status conference on the Alvarez & Marsal application. That's because

the U.S. Trustee has raised some questions and requires involvement of others in addition to Mr. Morrissey at the Office of the U.S. Trustee and we're not quite sure whether it might also require involvement of the executive office at the Office of the United States Trustee. And in light of the Thanksgiving holiday, we're trying to set up a meeting for early next week. I appreciate that Your Honor is potentially available on Tuesday afternoon at two o'clock. I think if Your Honor wouldn't mind terribly because we need to have confirmed when the meeting is going to be and figure out if there will be enough time then to have the hearing then. If we could also get a backup date for the very beginning of the week after Thanksgiving. We would very much appreciate it because there's a possibility that we may be meeting with the Office of the United States Trustee on Tuesday. It appears that everyone is only available by phone on Monday and we thought an in-person meeting might be more beneficial to discuss various issues. We've also agreed to provide an additional supplemental writing to the Office of the United States Trustee to address some of their concerns which relate primarily to Alvarez & Marsal being involved as both financial advisor and performing investment banking services.

What's slightly unusual about this retention from the way we often see folks perform both of those roles is that there are actually two separate legal entities and that's how

the application was presented as it was. But we are making every effort to work that out with the Office of the United States Trustee and we would appreciate any accommodation in terms of a holding date. Perhaps we could hold it Tuesday at 2:00 p.m. and if we can get it done then we would like to, but if not it may end up having to be just after the Thanksgiving holiday.

THE COURT: I have a preliminary injunction hearing scheduled for the Monday after Thanksgiving. It's been pushed several times and it may get pushed again. But it also may be -- if it goes forward it may be multiple days. I'm just unsure. So we'll communicate with my courtroom deputy and I'm sure we'll find the time to hear you the week after Thanksgiving, early in the week after Thanksgiving. It may have to be late in the day.

MS. GRASSGREEN: Your Honor, we'll willing to be flexible. We appreciate your accommodation. The concern obviously with the timing as you saw it in our papers and as I said in the opening remarks is that Alvarez & Marsal is very deep into this process with the transactions and was hoping to meet and start discussing the potential offers with our lenders as early as the beginning of next week. I think having them not officially employed is going to inevitably delay that process. It would be a little unfair of them to have to go through that without knowing that they've been engaged in a

case. So we would like to get it resolved just given the very compressed time period and cash that we have available.

THE COURT: Sure.

MS. GRASSGREEN: So we do appreciate your accommodation and we are going to make every effort to come to an agreement with the Office of the United States Trustee that resolves their objection. There were some other matters that they raised as well that we believe are not going to be an issue. We think we can accommodate all their other concerns. And we hope to accommodate the overriding concern as well.

I know that you had mentioned that you have some questions.

THE COURT: I do. And I guess I'd like to get them out on the table now because when we --

MS. GRASSGREEN: Yeah, I appreciate that.

THE COURT: -- do come for a hearing on it -- and again, you know, I only had a limited amount of time to review the motion and the agreements. But let me tell you what's on my mind as of now.

I understand the U.S. -- you've indicated the U.S. Trustee has raised a question about the representation -- the retention in two capacities, the two separate but related entities and I really won't address that for now, I'll leave that to Mr. Morrissey and his colleagues.

On its face at least I had fewer problems about the

financial advisory agreement. You know, the Committee when it's in place may have its own issues it wants to raise on, you know, what the cost of this is. But assuming for present purposes that the amounts are not unreasonable in light of the work they're being asked to do in these circumstances, I didn't have the concerns that I'm going to raise about the Alvarez & Marsal Securities, LLC agreement. And I guess with respect to Alvarez & Marsal Securities, LLC they signed a pre-petition engagement letter, retention letter, with the debtor and all of the subsidiaries. And I guess with respect -- my concerns are about the compensation in particular.

The monthly fees, which I gather there are no pre-petition amounts due with respect to the monthly fees?

MS. GRASSGREEN: That's correct.

THE COURT: Okay. So that's not my focus. My focus -- the questions I have really relates to the transaction fees portion of the agreement. And I understand that the deal people have been out there shopping the debtor and under what I refer to as the tail provision. Even if they weren't engaged today, or tomorrow, or whenever, they would have -- they could have a pre-petition, unsecured, contingent, unliquidated claim if and when a transaction was accomplished with any of the entities with whom they've been dealing.

So question one is does that pre-petition, unsecured, contingent, unliquidated claim give rise to an adverse interest

under Section 327? Unless they wish to waive their pre-petition claim. That's question one.

Question two or point two. It seems to me that the effect of the Court approval certainly with the order that you presented would be essentially to convert this pre-petition, unsecured, contingent, unliquidated claim into an administrative claim. And I'm wondering about that. Certainly in any interim order.

Next. The interim order seeks approval of the retention pursuant to the terms of this October 3 engagement letter which contains the compensation provisions. Not only under 327 but under 328. The effect of which, if I understand the law, would be that this would be a determination by the Court before any Committee is appointed and has a chance to speak up about this retention. That the fees contained in the engagement letter would be approved. 328, which certainly authorizes the percentage fee basis, you know, in 328(a), "Notwithstanding such terms and conditions, the Court may allow compensation different from the compensation provided under such terms and conditions after the conclusion of such employment if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions." And Judge Gonzalez in the XR Communications case really addresses this issue. And it's such a narrow exception

that you've got an uphill battle to convince me on any interim order to approve under 328. Perhaps I could be persuaded to approve under 327 which makes fees subject to 330 and reasonable.

And I understand Alvarez & Marsal is out there actively and you want to get this case over with and I'm not trying to limit what they can recover but I also before there's a Committee in place, I don't want to foreclose the Committee's ability to review something potentially so significant as the transaction fees that Alvarez & Marsal might be entitled to under the engagement letter.

So those are -- there may be other things that when I study it further come to mind, but those were things that raised questions in my mind that you ought to address whenever it is that you come back to deal with the motion.

MS. GRASSGREEN: Thank you, Your Honor. That's actually very helpful and we absolutely will address each of them when we return either on Tuesday or just after Thanksgiving. It looks like I'll be able to do lots of holiday shopping in New York.

(Laughter)

So we will continue the Alvarez & Marsal application until -- I guess we should continue it till Tuesday at 2:00 for now with a potential after further discussions after the hearing with Mr. Morrissey and his office for a further

continuance.

THE COURT: All right. And that hearing, if it's Tuesday at 2:00, will be in Judge Gonzalez' courtroom. I think it's 523.

Mr. Rosen.

MR. ROSEN: I only stand to address a similar issue that I raised before with regard to the retention of Pachulski Stang. Our understanding on behalf of the Weyerhaeuser entities is that Alvarez is only being retained by the debtor to sell the assets of the debtor. To the extent that someone seeks to retain the Alvarez firm to sell assets of a non-debtor, my client has not been asked to provide such consent, it has not given such consent. And the Weyerhaeuser entities are not before this Court.

Are the Weyerhaeuser entities signatories to the engagement letter?

MS. GRASSGREEN: The entities?

THE COURT: Yes.

MS. GRASSGREEN: I believe they are actually. Are the individual entities -- Your Honor, excuse me.

THE COURT: Nothing has to get resolved today. But, you know, the --

MS. GRASSGREEN: The answer is yes, they are.

THE COURT: Yes. I mean the Alvarez & Marsal Securities, LLC engagement letter -- October 3 engagement

letter -- is signed by somebody -- Thomas Ingram -- I guess what is it, general counsel? on behalf of I guess he's the managing member -- secretary managing member of a large number of entities. I didn't check off to see whether every one of the entities, including the ones in which Weyerhaeuser has a 15 percent interest are on there or not. But we'll deal with it when the time comes, Mr. Rosen. It doesn't seem to me to be ripe for today.

MR. ROSEN: Yeah. I don't know --

THE COURT: So let's deal with it when the issue comes up.

MR. ROSEN: Okay. I just didn't want --

THE COURT: Mr. Rosen, we'll deal with it when the issue comes up.

MR. ROSEN: Thank you.

THE COURT: Thank you.

MS. GRASSGREEN: And, Your Honor, I've indicated to Mr. Rosen we're happy to meet and discuss their issues.

THE COURT: Okay.

MS. GRASSGREEN: We weren't aware of them before today.

So that brings us to our debtor-in-possession financing motion and the cash collateral. And if I could just turn for a second to --

THE COURT: Mr. Morrissey?

MS. GRASSGREEN: I'm sorry.

MR. MORRISSEY: Your Honor, again Richard Morrissey for the U.S. Trustee.

I don't know if the Court wanted address any concerns or anything else about the Alvarez & Marsal --

THE COURT: I would certainly like to hear what concerns you have, Mr. Morrissey. It would probably focus my thinking before we bring this up again.

MR. MORRISSEY: And again, I don't want to sandbag counsel here. I certainly don't intend to argue a motion at this point.

As far as the interim versus final, the way I look at that, Your Honor, everything is open between the interim and the final and --

THE COURT: Not the way they have the order drafted.

MR. MORRISSEY: Yeah. But that's what I mean. That's the way it should be, in other words. That everything should be open for the Committee to get a second look at anyone's retention.

THE COURT: So tell me when you think we're going to have a Committee.

MR. MORRISSEY: Your Honor, I can tell you this. The deadlines for submitting response forms is November the 20th. We did not have an organizational meeting in this case. One of the issues that we're going to have to deal with, Your Honor,

on the Committee is something that counsel alluded to before and that is the fact that a lot of the trade creditors are contractors and subcontractors. And those entities have a habit of asserting mechanics liens. As I understand it, those liens are being asserted against the non-debtor subsidiaries, not against the debtors themselves. The debtors are, as Counsel stated, I believe either co-borrowers or guarantors on some of those subsidiary obligations. The tricky part is when -- if a subsidiary does, in fact, come into the Chapter 11 after the fact, as I phrased it to counsel yesterday, what we are trying to avoid is having some kind of a kaleidoscopic Committee where its membership changes every time you look at it because it turns out that somebody has a secured claim in the end. So that's going to be a little tricky. But I'm certainly hoping that we'll have a Committee before Thanksgiving. It's hard to guarantee that only because of the -- I guess turmoil is a good word -- that always hits before a holiday like that. But as soon as possible, Your Honor, we're going to try to form a Committee.

As far as the A&M retention, as Ms. Grassgreen has said, we have an issue with a dual retention and to put it very briefly, Your Honor, the problem is you have a financial advisor that does one function and an investment banker that performs quite a different function. There's a decision to be made by the financial advisor. Actually, I know counsel will

correct me on this. The debtor does retain control, or the company, the debtor's officers and directors are the decision-makers. There's no key for structuring officer in this case and Alvarez & Marsal is not playing that role.

But Alvarez & Marsal, the financial advice side, is going to be giving advice to the debtors as to what to do; whether there should be a sale, whether there should be restructuring, whether there should be a refinancing. And the entity that's going to be actually performing that function of sale, if that comes to pass, is the other side of Alvarez & Marsal.

And Your Honor mentioned the transaction fees, and I don't want to go into all the transaction fees right now, but it's a complicated setup and I'm still not totally clear on it, although Counsel certainly enlightened me on certain aspects of it. But Alvarez & Marsal, the investment banking side, could certainly benefit more or less depending on what Alvarez & Marsal, the financial side, decides is best for the company. And again, I will acknowledge that --

THE COURT: I'm not sure I agree with that. But go ahead.

MR. MORRISSEY: Okay. Now, another thing we discussed, Your Honor, is that there could be different deals with respect to different assets also. In other words, there could be a hybrid set of transactions. In other words, they

could sell some properties and not others, to be very succinct about that.

There were issues that we discussed about the expenses, that expenses, in general have to be documented. They don't just automatically get paid by the debtor, and also, about Alvarez & Marsal paying its own legal bills. Under the engagement letter or letters that I saw, it's not entirely clear, but certainly it provides that certain of the financial advisor/investment bankers' legal bills are to be paid by the estate. Our view is that the professionals have to pay some of their own expenses, and legal bills should be among them, unless, of course, they can convince us why not. There was an indemnification provision which contemplates legal bills, but for certain things. The U.S. Trustee takes the position that A&M should be paying their own legal fees, and not the estate. And also, to the extent that such legal fees are allowed, we need to see the time records for the attorney in question. And the danger there with that attorney is that that attorney is not retained by this Court. For all we know the attorney could have a conflict. And again, it could lead to some messy issues coming to light, and we'd rather avoid that.

There's an issue, Your Honor, about A&M's own time records that we believe that A&M should do their time record. We've been negotiating about the increments. In other words, should they be half hour --

THE COURT: Half hour versus tenths.

MR. MORRISSEY: -- one hour, tenths of an hour. Right. So, we've been talking about that. As I understand it, A&M is not to be paid by the hour.

THE COURT: Well, that's not true. One of the people, there's a flat monthly -- you know, on the financial advisors' side, one person is the flat $100,000 a month figure, but for others they're being charged on an hourly basis. Am I right, Ms. Grassgreen?

MS. GRASSGREEN: That's correct.

MR. MORRISSEY: I'm sorry, Your Honor. Again, we would need the schedule of hourly rates, then, you know, for that aspect of it. The conflicts check hadn't been complete as of the time of the drafting of the pleading. I understand that the conflicts check now is complete on Alvarez & Marsel's part, so we're going to need some kind of supplemental language there to clarify that not only are we looking, but we have found whether there are conflicts.

The other issue, Your Honor concerns what we call the Blackstone protocol, which comes from the Global Crossing case. In terms of indemnification, and in terms of the 328 retention, I don't know if Your Honor is familiar with that, but what that originated from was a meeting that the former U.S. Trustee had with representatives with the financial advice community. And they came to what they call a protocol, and under that

protocol, yes, there can be indemnification, yes, there can be 328 retention under certain conditions, but there's a quid pro quo for that, and that is that there should be a 45-day notice period before there is a final order. And the other part of that is that all creditors should be paid -- I'm sorry -- all creditors should be noticed.

THE COURT: From your lips. I mean --

MR. MORRISSEY: We had discussions, Your Honor, about what all creditors means in this case, because there are some who may -- some homeowners, as I understand it, who --

THE COURT: Warranty claims, and --

MR. MORRISSEY: Right. Who may or may not have claims. And we're still discussing that, because as I understand it, the question is whether hundreds of creditors are going to be served versus thousands. So, we still --

THE COURT: I mean, I would assume that the rules that permit me to say who has to receive notice, you say that those shouldn't apply on this?

MR. MORRISSEY: Again, Your Honor, I mean, the Court is the Court, and we're not trying to take anything away, but it's a general agreement that's been followed in this district for quite some time. And I provided counsel with a copy of the so-called Blackstone order. It's an interim order and a final order. And certainly once we get to the hearing, hopefully Your Honor will see the Dunmore version of those orders.

THE COURT: Okay.

MR. MORRISSEY: And that's all I have for now, Your Honor.

THE COURT: Thank you.

MR. MORRISSEY: Hopefully we'll be able to work it out. If I may conclude simply by saying there's one of a number of possible outcomes. One is we could just object. We could not come to a resolution. Another is that we could be persuaded by legal counsel. A third possibility, Your Honor, is that we could try to convince counsel to modify the pleading so that it becomes acceptable to the U.S. Trustee. And I mention that last possibility only because that's the sort of thing that may require a hearing a week later than otherwise.

THE COURT: Yes. No, and -- that's what usually happens. Not that it gets pushed off for a week, but that you work it out.

MR. MORRISSEY: Yes. That's what we were trying to do.

THE COURT: At least some of the issues you've raised I would feel confident you'll work out. Others I'm not --

MR. MORRISSEY: Thank you, Your Honor.

THE COURT: Thank you, Mr. Morrissey.

MS. GRASSGREEN: Your Honor, since this is not the hearing on Alvarez & Marsal, I am not going to respond to each and every issue that Mr. Morrissey has raised. We discussed

all of them, and I do want to state for the record, however, that by not saying anything we're not conceding any points. We're reserving all of our rights, Alvarez & Marsal is reserving all of our rights, particularly on the statements about conflict, because we have a very different view of whether or not there is either a potential or an actual conflict here, and we actually do not believe that there are either. And we'll be prepared to either convince the U.S. Trustee or convince Your Honor at the appropriate time. I don't know if there are any more questions or issue on the Alvarez & Marsal continuance.

THE COURT: Does anybody else wish to be heard on this? It doesn't sound like it.

MS. GRASSGREEN: So, Your Honor, that brings us to our debtor-in-possession and cash collateral motion, and if I could just take a second to confer with counsel for RBC, who did file an objection, and see if he has --

THE COURT: Yes.

MS. GRASSGREEN: -- worked things out, or what their position is, we'd appreciate it.

THE COURT: It's quarter after 11. We'll just -- we'll take a ten-minute recess. We'll resume at 11:25. Okay?

MS. GRASSGREEN: Thank you, Your Honor.

(Recess)

THE COURT: Please be seated. Ms. Grassgreen?

MS. GRASSGREEN: Your Honor, unfortunately we have not been able to work out the objection filed by RBC, so I'll just go through our presentation on the debtor-in-possession financing and cash collateral motion.

As I mentioned in our introductory remarks, this debtor filed with $119,000 in fee cash. That would be insufficient to pay the payroll through today. The payroll, through today, would be $140,000. So, if we do not have additional funds coming in, and use the cash collateral, this truly is game over -- we close the doors, everyone goes home, there is no one to work with any of the other lenders. There's no one to provide maps and information. We're done.

THE COURT: So, show me where, within the Code, there's the exception for the doors closing? Go ahead.

MS. GRASSGREEN: Well, I'm just -- so, in terms of the need for use of cash collateral, and the import of it, and for financing, there is certainly a critical and an emergent need for it today, and the impact on the debtor is quite significant.

There's two parts to our motion. One part is a million dollar DIP loan, and the other is use of cash collateral, and I'll walk through each of them separately, if you don't mind.

The DIP loan is a $1 million is the amount of the loan, $500,000 on an interim basis and $500,000 on a final

basis. The $500,000 on an interim basis would actually take us right through the hearing on the 14th if we end up with having a final DIP hearing on that day, and we were expecting that that would be the time period, and that was why that number was selected.

The lender is Mr. Dunmore, who, as I mentioned earlier, is the former sole owner of the entity that had all of these assets before. He's sole owner of Dunmore California, which is a Subchapter S corporation. He has no equity interest in this debtor. He is not an employee of this debtor. And he has no control over this debtor. He is performing consulting services for no charge. He is working about 50 hours a week assisting with the wind down activities, and it is assisting the debtor, and frankly, it's also in his personal interest to do so because to the extent we have a successful restructuring it is going to limit his exposure on his personal guarantees, which is something that, as you can expect, is of significance to him.

THE COURT: Am I right, it's $149 million on his personal guarantees?

MS. GRASSGREEN: No, Your Honor. I don't believe that they are that much. He has only guaranteed -- that may be the number that Dunmore Homes has guaranteed of the subsidiary debt, and then the rest is Cobar's (phonetic), but Mr. Dunmore has guaranteed a very limited number of obligations. He's

guaranteed one of the debts to Affinity, one of the obligations to Indymac Bank, certain surety obligations, and I believe a title policy. So, I mean, the number is significantly less than --

THE COURT: Can you put a dollar value on it?

MS. GRASSGREEN: I believe the total asserted number -- so, I'm going to look over to the Vice President of Finance, is less than $30 million.

THE COURT: So, he's either a co-signer or a guarantor on approximately $30 million?

MS. GRASSGREEN: That's correct, Your Honor. And that's the face amount of the debt. We don't know that that will be the amount of the claim, ultimately. And I did refer to Mr. Strauch, who is in the courtroom, who I neglected to introduce to you earlier, bu Doug Strauch, the Vice President of Finance, and the -- who put in an affidavit here in support of the first day motions, and next to him is Scott Brubaker, our financial advisor from Alvarez & Marsal.

Your Honor, the DIP agreement has a nine week budget. The reason why there's a nine week budget for the DIP agreement, and we'll talk about a 12-week budget for the cash collateral is that the $1 million is used up for operating expenses, and no payments to professionals are accrued at that point. So, at the end of week nine, without any payments to professionals we've gone through a $1 million, and that was why

that budget period was chosen, because that was the amount that Mr. Dunmore was prepared to lend.

The DIP provides for a senior lien on any unencumbered property. The only item that we think is completely unencumbered is the Fadano option, with the life estate, which we discussed earlier. But there's a junior lien on everything else, and there are a number of other items, like the equity interest in the Stone mitigation that we don't believe any creditor has even an asserted, let alone unperfected, security interest in. We have explained in our papers why we believe that some of the secured lenders may assert an interest in the $119,000, because there was a consolidated cash management system --

THE COURT: Is RBC one of the lenders asserting a lien on the $119,000?

MS. GRASSGREEN: You know, Your Honor -- they may say yes, although their papers, frankly, do not say that. Their papers indicate that they are concerned about proceeds from Monteceda (phonetic) --

THE COURT: Rents.

MS. GRASSGREEN: -- Diamond, Ridgestone, Creek, and Providence. And I'll get to that, but we are not seeking to use those in any manner today, and hopefully that will address that portion of their objection.

But we will bring whatever appropriate papers we need

to avoid any unperfected security interest. But we did confer with substantially all of the lenders, on their own, got together yesterday and had a conference call, and had some comments, and we have taken their comments into account, and I'll go through that. So, I really believe only RBC has an objection. I regret that they were not part of that group, and I didn't speak to them before this was filed, because I would have hoped that we would have been able to work it out. That certainly is our intention, to work with our creditors here. This is, again, a case that has a very short life, and limited liquidity, and so, resolution, I think, is going to be much better than litigation to the extent we can do it. If not, we'll move forward.

In connection, there's some provisions in the DIP agreement that I want to comment on, because they're not -- we've highlighted them as extraordinary provisions, and I want to make one correction, a confusion between the motion and the order that was just brought to my attention by one of the lenders.

One of the items in connection with the DIP agreement is we agreed to a slight modification of the note, the due date on the note, and I mentioned that earlier. The modification is, as I mentioned, the note was due -- when we modified the note on September 10th, it was modified to provide that the due date was the earlier of the day the tax refund comes in or

December '09, unless further extended.

THE COURT: I thought you had said December '08.

MS. GRASSGREEN: It was originally due December '08.

THE COURT: Okay. And that was changed to '09?

MS. GRASSGREEN: Right.

THE COURT: Okay. Go ahead.

MS. GRASSGREEN: The theory being that there could be an audit, we don't know, in the tax refund.

THE COURT: Right.

MS. GRASSGREEN: But if that due date hits December '09, and the note is due, it's due, whether the tax refund comes in or not. The modification is only to make the earlier of 15 days after the tax refund or December '09. We're not limiting the recovery on the note to the tax refund in any way, and the lenders ask that I make that very clear on the record. And we do intend to document that in a separate agreement, and we'll share that with the interested parties so everyone's comfortable with it.

There was some language in the motion regarding the offsets that Mr. Dunmore asserted. It is a cause for confusion, and I apologize for that, Your Honor. There was originally discussion with Mr. Dunmore about acknowledgment of certain offsets, and that came out at the last minute, and it didn't make it out of the motion, but it made it out of the order and the agreement, and we have discussed with the U.S.

Trustee and the other lenders, and we've added proposed language to our order an express reservation of rights. There's a provision in the order that no offsets are going to be acknowledged without approval from Your Honor, presentation to the Court, and we have a revised form of proposed order that in addition to that some language for an express reservation of rights for the estate and all parties, and for Mr. Dunmore, of course, whatever claims of offset he has.

THE COURT: I have a question. In your motion, on Page 10, Paragraph 16, the second sentence in Paragraph 16, where it says -- I'll wait until you find it. It's behind Tab 8 of your binder.

MS. GRASSGREEN: Right. This is probably that statement that was left over that I think perhaps --

THE COURT: Okay. Maybe that will clarify it, because we --

MS. GRASSGREEN: Yes, Your Honor. That is --

THE COURT: My clerks and I searched the loan agreement, and we couldn't find --

MS. GRASSGREEN: That is exactly why -- that is a product of middle of the night negotiations --

THE COURT: Okay. That's fine.

MS. GRASSGREEN: -- and that was what was just brought to my attention by counsel for Guaranty Bank. So, notwithstanding Paragraph 16, there is no provision in the

order or the loan agreement to acknowledge any offset of any sort, and it does specifically provide for Court approval and a reservation of rights. And I apologize for that oversight.

THE COURT: You've clarified -- it's fine.

MS. GRASSGREEN: At the request of the U.S. Trustee, the DIP lender has agreed to provide five days' written notice prior to exercising certain rights under the agreement, and we've included that language in a proposed order. And as this is an interim order, there was originally $100,000 carve out for post-default expenses. That could be used for debtor's professionals and also for what I'll call burial expenses if the case were to be converted. In our proposed form of order that we have today, which is interim, we were proposing to actually have a very specific carve out for the burial expenses of 20,000, and 80,000 for the rest. I've discussed it with Mr. Morrissey, and we've -- since this is interim the committee may want to revisit that. But for the interim we don't -- we don't expect we're going to be needing to look to that at --

THE COURT: I hope not.

MS. GRASSGREEN: -- during this interim period. On cash collateral we did attach a 12-week budget, and it's the same budget through nine weeks, and it carries it out another three weeks. And the reason why we didn't just stop at nine weeks and come back in is that it ends on January 11th, which would mean filing the papers and responses between Christmas

and New Year's, and for the benefit of everybody involved, we thought if we could carry it out. In order for us to have the cash to go out that far, one of two things has to happen. We either have to sell the Stone mitigation property, and recover the 2.8 million in equity there, which would then partially be repaid to Mr. Dunmore and give us another million eight in cash, or get turnover of the deferred compensation fund, which, as we mentioned, we intend to bring --

THE COURT: That's a million seven?

MS. GRASSGREEN: -- before Your Honor on December 14th. So, one or the other of those has to happen, or we're not going to go 12 weeks, because we will not have additional cash to continue operating if one of those things do not happen.

As I mentioned, various parties have unperfected security interests, and various items of personal property. We think, you know, perhaps it's just the 119,000 that was in the bank, and was co-mingled from the consolidated cash management system. It's impossible to identify the source of those funds because everything was consolidated and co-mingled. So, we have proposed to provide a replacement lien on things like the Stone mitigation property and the Fadano option that nobody else had liens on, and we believe that there is sufficient asset --

THE COURT: The mitigation property has a first --

MS. GRASSGREEN: It has a first of a million five. We believe there's 2.8 million above. And the other assets in the asset. I would also note that in the DIP collateral package carved out from the collateral is any interest in the deferred compensation fund, and any interest in Mr. Dunmore's note, although he, of course, retains a right of offset against the note, and he could elect, rather than being repaid his million dollars, to just reduce the money.

So, that is a summary of the papers. RBC has filed an objection, and they -- I boiled it down, really, I think, to four points, and I'll take them one by one.

Their first point, with absolutely no evidence whatsoever, is the sale was a fraudulent conveyance because they say so, and because it is you can't authorize any use of these assets because they don't truly belong to this estate. Certainly, Your Honor, at the appropriate time we will take up those issues. There is a State Court proceeding pending in Fresno where similar allegations, although I believe in that proceeding they've alleged actual fraud rather than constructive fraud, is pending. And, you know, that may or may not come before Your Honor, rather than in Fresno. We haven't made a final decision yet. But we do not believe that that was -- is a basis to deny use of cash collateral here, having -- that those allegations aren't proven, and frankly, we don't think they ever will be proven, because as I described earlier,

the sale was beneficial. It created an asset, the tax attribute that didn't exist before, and it's completely transparent, and all of the assets and all of the liabilities have gone. All that happened is that the ownership has changed And as to the projects that RBC has an interest in, those are still in the project LC's, always where they resided. It's just the ownership interest that's changed. So, we believe that if and when that issue ever comes up, we will succeed on it, and that it is not a basis to deny the DIP financing request or use of cash collateral today. As we stand before you today, these assets have been transferred, and they have not -- that transfer has not been avoided.

The next argument is in Paragraph 12 of their opposition, and it pertains to the definition of permitted priority liens, and we are in agreement with making that change, and we have proposed some language that we've shown to RBC's counsel, and I think on that point --

THE COURT: Just -- which paragraph again?

MS. GRASSGREEN: It was Paragraph 12 of their opposition.

THE COURT: All right. I have that.

MS. GRASSGREEN: And it dealt with the avoidability. And it comes up a couple of places in the order, but whether or not the replacement lien attaches to liens that are unavoidable or unavoided. And so, we're going to correct that, use the

words unavoided rather than unavoidable, and we have a number of places in the order where that shows up, and we've shared that with RBC. And I believe that as to that point I know they're retaining their argument that the whole thing should be denied --

THE COURT: Right.

MS. GRASSGREEN: -- but, you know, if we get past the overriding argument as to that point, I think we're conceding that point and we're willing to make that change. Their next argument relates to the carve out provision, and the carve out --

THE COURT: Save yourself.

MS. GRASSGREEN: Okay.

THE COURT: You know, I haven't been on the bench that long, but I have not seen a carve out that agrees to pay for actions against the DIP lender, so let's just move on from there.

MS. GRASSGREEN: Okay. Thank you, Your Honor. And then, the final argument I believe that they made, and obviously I reserve my right to respond after we hear from RBC, but from my reading of their papers, at least, is that they do request clarification that we're not using any cash collateral from the four projects that they have identified, and we are not using any cash collateral from their four projects. None of the items that we are projecting to use, the cash on hand,

the cash from the deferred compensation fund, the proceeds of the Stone mitigation property, none of the things in this budget period are coming from those projects, and we would love nothing more to restart and have some sales from those projects, but everything is shut down at the moment, Your Honor, so we don't expect that to be an issue --

THE COURT: Is anything selling? I mean, is there any revenue coming in?

MS. GRASSGREEN: No. None.

THE COURT: I didn't look at the budget carefully enough to see whether --

MS. GRASSGREEN: Well, the only revenue -- there's a very small revenue item, and that reflects that Dunmore Land Company is still sharing space with Dunmore Homes, and they're making a payment for services that Dunmore Homes provides, and that is the only incoming number in the deferred comp fund. But, no. What happened in this industry, Your Honor, was really -- you know, the way that it generally worked in home building is that you would have a certain number of homes that you would sell every month, and you'd have a release price, and you'd pay off the debt, and then there would be something above that, and that would pay things like taxes, and interest, and operating expenses. And when the -- what they call in the home building industry, the absorption rates went from six a month to one, and then the prices had to drop because as the

absorption rates went down everyone dropped prices to try to get the absorption rates up, you know, there is nothing above the release prices, and it's not just with this debtor, you know, this is a crisis with many, many home builders around the country.

THE COURT: Are these mixed-use developments? Or are these single-family homes, townhouses, condos?

MS. GRASSGREEN: They are single-family homes.

THE COURT: Is there a strip mall? I mean, where is the rent coming from? Are there strip malls in them, or something?

MS. GRASSGREEN: There are not rents to my knowledge, Your Honor. I'm looking to Mr. Strauch. They're just proceeds of the sales of the homes.

THE COURT: Okay. I saw a reference to rents, and --

UNIDENTIFIED ATTORNEY: I think the rent you're referring to is either the Dunmore Homes -- Dunmore Land rent arrangement, or we have sold and leased back two model homes that we continue to have rent --

THE COURT: I think actually it was in RBC's objection, where they -- they wanted to be sure that their rents aren't being used -- it's just maybe the term of art in a string of terms in a document, but there really isn't any. Okay.

MS. GRASSGREEN: Right. So, as of now there's no

sales. You know, and really, the debtor's operation there's about 37 employees, Your Honor, and the primary -- you know, they're working on the restructuring piece of this, and putting together all of the information, and dealing with the liens, and the sureties, and the set aside letters, but they're also going out to the properties and making sure that they're secure. And we described in our papers they're working on winterization --

THE COURT: What's the winterizing? You're in California?

MS. GRASSGREEN: Well, it's rain, Your Honor. It's rain. You know, in California we are dry all summer, and then when it rains --

THE COURT: I used to live there.

MS. GRASSGREEN: Oh. Okay. And what we refer to as the SWPP, which I'm sure I'll get this wrong, Storm Water Pollution Protection and Prevention Program?

THE COURT: Very good.

MS. GRASSGREEN: The SWPP program, which relates primarily to land that's been disturbed, and reducing runoff from that land and the rain. So, I learned a new word in connection with this case, Your Honor, called waddle, which is the straw piece that gets put around the edge that we all see that looks like it's in chicken wire, to keep the runoff. So, the winterization is to make sure we get our waddles in place,

and other related activities. So, that is primarily what the employees are doing. And there's quite a bit of work to be done, whether or not we are able to come up with a transaction or to do an orderly wind down, we have, you know, advised the lenders that, you know, we will work with them. We don't intend to just, you know, leave everything in disarray. And there's a lot of engineering drawings, and documents that have to be compiled in the event that we were to just do an orderly wind down if we can't accomplish a transaction, which we hope that we can.

So, Your Honor, with that I -- I believe that our comments should address all the objections of RBC, and we would ask that you overrule their objection in light of the changes that we're proposing to make, and authorize the use of finance -- the use of cash collateral and the financing as set forth in the motion as modified by our comments today.

THE COURT: Thank you.

MS. McMAHON: Michelle McMahon from Bryan Cave for RBC. As addressed, some of the points that we'll get to a little bit later on related to the terms have been resolved. But going to the bulk of our objection, it relates to the sale that's been described by the debtor that occurred two months pre-petition. RBC is a significant secured lender to both the debtor and its non-debtor subsidiaries, the four projects referenced by the debtor. On those financings the debtor is

either a guarantor or a co-borrower, depending on the financing in question.

On November 7th, RBC filed a series of complaints in the State Court alleging that each of the financings which are in default, and have been in default, are a breach of contract, breach of note, conspiracy claims, and fraudulent transfer claims, in addition to seeking foreclosure of the four properties related to those defaults. The basis of their fraudulent transfer claims is that in exchange for substantially all of the assets of Mr. Dunmore's companies, the debtor paid $500 in an assumption of liability, and in exchange received a $280,000 cash payment.

THE COURT: And collateral for the $11.1 million loan.

MS. McMAHON: So we've just learned. But the concern there is that --

THE COURT: Was that the substantial value?

MS. McMAHON: Well, that depends, since the note was also pushed out for an additional two years, and there's apparently no income whatsoever to pay the obligations which have been in default --

THE COURT: The note is not pushed out if he receives the refund in that time, correct?

MS. McMAHON: I understand it was pushed out even before, that there was an additional modification to push it

out farther.

MS. GRASSGREEN: That's not correct, Your Honor.

MS. McMAHON: Okay.

THE COURT: Well, let me just --

MS. McMAHON: Well, could you clarify that?

THE COURT: Ms. McMahon --

MS. GRASSGREEN: It's due the earlier of receipt of -- 15 days after receipt of the tax refund, or December '09.

THE COURT: 15 days -- if he receives his refund, 15 days after that he's got to pay the note.

MS. McMAHON: When is the refund anticipated?

THE COURT: Ms. McMahon, talk to me, not to --

MS. McMAHON: Oh. When is the refund anticipated?

THE COURT: We'd all like to see it.

MS. GRASSGREEN: Your Honor, we fully expect, and Mr. Dunmore's counsel is on the phone, and she may want to respond to this, but we expect that he will file his tax return as soon as possible after January 1st, and, you know, if all goes well it could come in as early as next summer, but we're dealing with the IRS and I certainly can't commit them --

MS. McMAHON: No, I understand. I was only asking the former question, not the later question.

MS. GRASSGREEN: Certainly.

THE COURT: Ms. McMahon, talk to me, not to Ms. Grassgreen. Okay? What was transferred away? What value was

transferred away that your client has a claim in? I mean, I understand there was the sale, the terms of which have been described. What assets -- they assumed -- the debtor has assumed the liability to your client, and so, what assets, if any, have been moved away or made unavailable to your client's claim?

MS. McMAHON: RBC's concern is that the individual to whom all of the assets were transferred doesn't have the financing or the experience to run the company with any success, and that there's insufficient liquidity for the company to continue, which seems to be --

THE COURT: I know, but I want to focus on the separate set of issues that you're raising. But, what assets have been transferred away and made unavailable to your client? Your client had a claim against the debtor's predecessor --

MS. McMAHON: Correct.

THE COURT: -- and now it has a claim against the debtor, as well as the non-debtor subsidiary. Correct?

MS. McMAHON: I did not draft the State Court complaint, but it's my understanding that the concern goes to who --

THE COURT: I didn't ask about the State Court --

MS. McMAHON: -- the principal is --

THE COURT: I didn't ask about the State Court complaint.

MS. McMAHON: Well, that's the genesis of our fraudulent transfer claim.

THE COURT: But my question specifically is, I don't want to know what's in your State Court complaint. I want you to tell me, you're objecting to the DIP financing motion.

MS. McMAHON: Um-hmm.

THE COURT: And you raise an issue that there's been a fraudulent conveyance. There's been no adjudication by a California State Court. There's been no attachment or other pre-judgment remedy granted by a California State Court. And so, my question to you is not what you've alleged in California. My question to you is what, if any, assets as to which you may have had some claim before, are no longer available to you?

MS. McMAHON: The concern is that --

THE COURT: You keep talking about concern, and I keep asking about transfer of assets. You're asserting that somehow there's a fraudulent transfer claim that should lead me to deny the interim debtor-in-possession financing order, and I don't want to know about concerns. I want to know about transfer of assets. Was there a transfer of assets that made unavailable -- your client had a claim -- has a claim against the debtor for the same amount that it had a claim before the September sale, and I have my own questions about the September transaction, but I don't see how where that had the effect of

transferring away anything of value from your -- as to which your client may have had a claim. If anything, it brings perhaps somewhat greater security to your client because the transaction resulted in the security -- the collateral being the refund claim, whatever it turns out to be worth. They didn't have it before. They have it now. Before they had a naked note for $11.1 million. Now they've got a note plus security of uncertain value that they didn't have before, but nothing transferred away. If I'm wrong, tell me. But don't tell me about your concern. Tell me about what got transferred away.

MS. McMAHON: The change in the sole shareholder of the company owning the assets changed from an individual with significant assets to an individual with less significant assets.

THE COURT: Did Mr. Dunmore personally guarantee RBC's debt?

MS. McMAHON: I don't believe he did personally guarantee those liabilities, although I would have to check the documents to confirm.

THE COURT: If he --

UNIDENTIFIED ATTORNEY: Your Honor, this is (indiscernible). I'm (indiscernible) RBC's debt --

THE COURT: I'm sorry. Your voice was breaking up. If you're on a speaker, pick up the phone.

MS. YOUNG: I'm sorry, Your Honor. This is Beth Young. I represent Sidney Dunmore, and Mr. Dunmore did not execute any guarantees in favor of RBC.

THE COURT: Okay. Thank you. Go ahead, Ms. McMahon.

MS. McMAHON: But to the extent that it's an entity owned and controlled by a single person, there are clearly potential veil piercing issues there that would open up whomever the shareholder is to liabilities for those actions.

THE COURT: And assuming that's true --

MS. McMAHON: Correct.

THE COURT: -- what effect does granting the interim debtor-in-possession financing order have on whatever claims you might have against Mr. Dunmore personally, or against Mr. Cane personally?

MS. McMAHON: Our concern is that the debtor is seeking to place liens on assets which we've alleged it actually doesn't have anything more than a possessory interest in.

THE COURT: Which assets --

MS. McMAHON: All of its assets were, as we've alleged in the State Court, fraudulently transferred to it, giving it nothing more than a possessory interest.

THE COURT: You don't have any -- you didn't get an attachment, or prejudgment remedy. You haven't asked this Court for one. You say you filed a lawsuit in California.

Fine. But how does that entitle -- I don't understand what rights or interests of yours are being effected.

MS. McMAHON: To the extent that we would be successful in the fraudulent transfer claims and it were later determined that these were not assets of the debtor, then any failure on our part to assert that now when there were being liens placed on -- in a relatively senior position could be --

THE COURT: Okay. Any other points?

MS. McMAHON: Excuse me?

THE COURT: Any other points you wish to make?

MS. McMAHON: The rest of our objections have largely been resolved. I did want to address one single issue on Your Honor's comment about the limitations on the use of the DIP funds. And I hear what you're saying with respect to the assertion of claims, but this limitation is broader and goes to even a challenge to claims asserted by Mr. Dunmore himself, including, I would have to assume, the setoff. And tying the hands of the committee before it's even formed with respect to any funding for defending claims against the estate seems over broad.

THE COURT: I don't want to be thick, but I didn't follow this point in your brief, and I don't follow it right now, so just tell me one more time. Okay?

MS. McMAHON: Okay. According to the language that's in there, not only can they not have any funds from the DIP

financing, the debtor, or the committee professionals, to assert claims against Mr. Dunmore --

THE COURT: That's standard.

MS. McMAHON: -- they also can't use it to defend against claims by Mr. Dunmore, or to challenge any claims by him, as is the language of the document. And taking away this defensive right is, in our position, over broad.

THE COURT: Do you have any authority for that position? I mean, I don't claim to have reviewed that many DIP motions so far, but for better or worse, it seems to be the standard that a DIP lender doesn't permit its funds to be used with respect to any claims against it, or -- I mean, the carve out doesn't apply. I mean, do you have some authority for your position?

MS. McMAHON: We do not yet, and it's obviously a first day motion.

THE COURT: Yes, it is. It is.

MS. McMAHON: We will certainly have some by the final. But I think in this situation, as opposed to potentially other situations, it's a little unique in the sense that the DIP financer is also, for all intents and purposes, the former principal and sole shareholder of the debtor principal and predecessor in interest. And that makes it that unique.

THE COURT: Well, I mean, it -- the immediate

question I had is, and I know that the debtor asserts this as an arm's length transaction, but given Mr. Dunmore's connection to the debtor, the fact that he's a co-obligor, guarantor in a substantial amount of debt, you know, I think there are questions about that. But, I mean, I think that would, if anything, go to questions -- are the -- I mean, you don't claim that the financial terms of the DIP are unfair, do you? I mean, there's no fees, the interest rate, no one's raised a question so far about that the interest rate is too high, or that the duration or term is too short, or that there's anything else coercive about it, because that was something I looked for carefully because of this historic relationship of Mr. Dunmore. But I didn't see anything about the -- I know you're raising the question of the use of proceeds to prosecute or defend claims against Mr. Dunmore. You know, if and when the committee comes into existence, and it believes there are good claims, if there are really good claims they will find a way to finance them, even without Mr. Dunmore's money. I mean, that's the reality of it. I bet you there are a lot of lawyers who would line up for that opportunity if they thought there was a good claim there.

MS. McMAHON: And what about a good defense? I mean, there are setoff claims alleged to exist in the motions themselves --

THE COURT: Well, that's -- I thought that's been

taken out.

MS. McMAHON: -- yet the committee won't have the ability to --

THE COURT: I thought that was taken out. What remains is --

MS. McMAHON: Baking them in has been taken out, but they still --

THE COURT: I'm sorry?

MS. McMAHON: Baking them in, or baking approval of them in had been taken out for a greater reservation of rights to object to them, but there's still no financing in place for the committee to actually object.

THE COURT: Okay. Anything else?

MS. McMAHON: Those are all our objections.

THE COURT: Thank you very much, Ms. McMahon. Mr. Rosen?

MR. ROSEN: Very briefly, Your Honor. I should have mentioned before, Weyerhauser's claims in this case are -- investment with Mr. Dunmore are approximately $30 million. I neglected to mention that before. By way of housekeeping, I assume that the loan agreement will be modified from what was submitted to the Court because Section 4.1 of the loan agreement, if I'm reading it correctly, grants a much broader security interest than what's being requested today. I assume that will be made consistent. The only other --

THE COURT: Show me what you're talking about.

MR. ROSEN: The language of 4.1 on Page 10 --

THE COURT: I'm there, but which subparagraph?

MR. ROSEN: Page 4.1A.

THE COURT: Yes.

MR. ROSEN: Look on Line 3, it says, "on all of the property, assets, interests, and property or assets of a borrower." For example, the third line from the bottom of 4A, just by way of example, says it includes -- I assume what they're referring to is Chapter 5 claims. But in the interim order, I believe, on Page 7 of the application, it says the collateral was the Fadano option, unencumbered assets, and a junior lien on a Stone mitigation property. I assume that will just be reconciled. And it says there will be no --

THE COURT: I thought it was if everything else other than --

MS. GRASSGREEN: Yes. Are you reading from the motion or the order?

MR. ROSEN: I'm reading from Paragraph 4.1 of your -- what I think is the loan agreement, and comparing it to the description of the collateral on Page 7 of your motion for interim financing.

MS. GRASSGREEN: Your Honor, it's a junior lien on everything.

THE COURT: That's what I thought.

MS. GRASSGREEN: And with the exception of the deferred compensation fund, and the notes --

THE COURT: And the avoidance actions.

MS. GRASSGREEN: -- and the avoidance actions --

THE COURT: Right.

MS. GRASSGREEN: -- which is 4.1B, the specific exclusion. Notwithstanding the foregoing, collateral shall not include avoidance assets lender receivable. The description in the motion was in all events qualified by the agreement. It was just a description.

MR. ROSEN: So --

THE COURT: That's what I understood, Mr. Rosen.

MR. ROSEN: In 4.1 it says and all causes of action arising under the Bankruptcy Code.

MS. GRASSGREEN: Right, but look to B.

MR. ROSEN: I understand that. So -- B is inconsistent with A. This says shall not include avoidance assets, but A says that it includes actions arising under the Bankruptcy Code.

MS. GRASSGREEN: B says notwithstanding the foregoing.

THE COURT: Yes. It's a carve out. It's --

MR. ROSEN: All right.

THE COURT: A gives you everything, and B takes some of it back.

MR. ROSEN: Your Honor, just in the nature of a reservation of rights, the operating agreement between Dunmore and Weyerhauser prohibited -- it prohibits the transfer of the 85 percent interest. It's our position that the debtor in this case doesn't have an interest in the four Weyerhauser entities to use as collateral for this DIP loan, so that we reserve all of our rights in that regard.

THE COURT: If they don't have anything to give, they haven't given anything.

MR. ROSEN: Thank you very much.

THE COURT: Mr. Morrissey?

MR. MORRISSEY: Thank you, Your Honor. Once again, Richard Morrissey, for the U.S. Trustee, and once again, I have not come to object. But perhaps to clarify Your Honor's colloquy with Ms. McMahon on the challenge to the lien of the DIP lender, what we customarily do is, as Your Honor has said, is that we don't necessarily force the lender to pay for opposition to its own claim, but we do generally have a carve out for a committee, or perhaps someone else to investigate the validity of a lien. And perhaps that would be appropriate here, although with the caveat that very often in other cases, unlike this one, there is also a pre-petition lien to investigate, as well as the debtor-in-possession lien.

Other than that, Your Honor, as Your Honor suggested, there are certain provisions in here that make this DIP loan

actually less onerous than most of the ones that we see, because the lender is only getting junior lien, or perhaps --

THE COURT: It's not priming anybody.

MR. MORRISSEY: Right. It's not displacing anyone. And as far as the carve out for burial expenses, it's not just the committee that may want to revisit --

THE COURT: It shows that I'm new to this. This is the first day that I've heard about the burial expenses, but --

MR. MORRISSEY: Okay. It's -- in the event a Chapter 7 Trustee is appointed --

THE COURT: Right.

MR. MORRISSEY: -- or perhaps even an 11 Trustee, Your Honor, the idea is we don't want the Court's hands to be tied in case that's the way it wants to go. But the amount in the case of this size, perhaps that can be revisited. But as --

THE COURT: You know, the problem I see, Mr. Morrissey, is that it would be nice if somebody were standing in line to commit more than the million dollars, but when you look at the budget and the realities of the case, they are barely scraping through to January, and it would be nice to increase the carve out, to increase the use of the carve out, and then where does that leave the case? And, that's fine. That doesn't mean that the Court should be steam-rolled into approving something that isn't proper, but there is so little

room in the budget that if it doesn't put those bales of straw out to winterize the property --

MS. GRASSGREEN: The waddles.

THE COURT: -- and California gets more rain than they've gotten in the last year, you know, the problems are bigger. So, I'm -- what would the U.S. Trustee ask the Court to do?

MR. MORRISSEY: Well, again, at this time, Your Honor, I don't want to give the Court a number. I gave counsel a number before. But what I think we can do is we can --

THE COURT: You can wait for a committee, and --

MR. MORRISSEY: Yes. We can work on this, and among the committee and the debtors, and the U.S. Trustee, and we can work something out. The U.S. Trustee is satisfied with the changes made so that notice and cure provisions, or actually the insertion of notice and cure provisions, because what we try to avoid is having events of default and termination of financing automatic. And we want people to realize what's going on, and perhaps if there's a problem it can be fixed, and perhaps Court intervention is necessary, or at the very least desirable. And, Your Honor, apart from that, the U.S. Trustee has no comments, unless the Court has any questions?

THE COURT: No, Mr. Morrissey. Thank you very much.

MS. GRASSGREEN: Your Honor, just a point of clarification on the carve out. And I'm prepared to respond to

the comments by RBC on that point if you would like, but I know that earlier you said it wasn't necessary. It does allow for the investigation of claims. It's specific in Paragraph 6 of the order. It -- you know, it's --

THE COURT: All right. Let me look at that. Hold on.

MS. GRASSGREEN: The language says, "fees and expenses occurred in any connection with any challenge to," and then there's a paren, "as opposed to the investigation of."

THE COURT: Okay. Let me just -- did you submit a revised order? You're going to have to submit another revised order.

MS. GRASSGREEN: We are -- we do. And we do have -- well, we have two forms of proposed revised order, neither of which I think addresses everything we've agreed to today, so I think we'll have to submit one this afternoon --

THE COURT: All right.

MS. GRASSGREEN: -- Your Honor, if that's acceptable, if Your Honor is inclined to grant the motion, that is.

THE COURT: Any other points you want to raise?

MS. GRASSGREEN: That was the only point I wanted to make.

THE COURT: All right. With the changes that have been discussed, subject to the Court's review of the revised order, the Court will grant the interim motion, approval of the

interim motion. The Court overrules the objections of RBC, first with respect to its argument regarding fraudulent conveyance, without any -- the filing of a complaint in California establishes nothing, other than the filing of the complaint itself. There has been no attachment or other liens imposed by a Court in California or elsewhere. It does not appear to the Court, based on the papers or the colloquy in Court today that the September transaction had the effect of transferring any assets away from the debtor, which remains, or has assumed the liability to RBC.

I understand that the debtor has agreed to make the change that arises in Paragraph 12 of the opposition, and Ms. McMahon, I gather that that objection you're withdrawing, that specific one?

MS. McMAHON: That's been resolved.

THE COURT: All right. Thank you. And, with respect to the third -- with respect to the carve out issue, Ms. Grassgreen has pointed out that the carve out can be used to investigate claims, although not to prosecute or defend, so that objection is overruled. With respect to the fourth point about not using cash collateral for the four projects, Ms. Grassgreen represented that it will not be so used. And any remaining points raised in the RBC objection are overruled.

So, we will go forward -- I think you still have considerable work to do before the final approval hearing on

the cash collateral, and I'm sure you can work with Mr. Morrissey and perhaps resolve any remaining issues with Ms. McMahon's client, as well. The final approval hearing will be on December 14th. And I think I indicated that hearing would be at 11 o'clock.

MS. GRASSGREEN: Thank you, Your Honor.

THE COURT: Is there --

MS. GRASSGREEN: Your Honor, one housekeeping matter. I know we were discussing earlier about the scheduling, and I believe that the U.S. Trustee has tentatively set January 11th for the 341(a). Is that correct, Mr. Morrissey?

MR. MORRISSEY: Yes, Your Honor. That's the date that we're aiming for.

MS. GRASSGREEN: So, if Your Honor could just keep that in mind with respect to scheduling of the hearing, we certainly wouldn't want to conflict with that date, and also, perhaps we could have a hearing, you know, somewhere around that date so that the parties who want to travel --

THE COURT: What day of the week is the 11th?

MR. MORRISSEY: That's a Friday, Your Honor.

MS. GRASSGREEN: So, perhaps a hearing on the 10th, or -- what time --

THE COURT: What time is the 341?

MR. MORRISSEY: Well, it's not set, Your Honor, and the reason that it can't be set in stone, we need to receive

the creditor matrix, so that they can be noticed.

THE COURT: All right.

MR. MORRISSEY: So -- but my plan is to have it November 11th -- January 11th, 2008, and the time that I've been given, I don't have as much control over these things as I might like, is 2:30 p.m.

MS. GRASSGREEN: So, assuming we had a short hearing, perhaps the morning would work on that Friday, but we may -- if you were considering that week for a January date --

THE COURT: Actually, what I was considering, I'll go back and look at Friday, the 11th. I was looking at Friday, the 18th, and then Friday, February 29th.

MS. GRASSGREEN: Okay.

THE COURT: And then, Thursday, March 27th, Thursday, April 24th, and Thursday, May 22nd. So, December, January and February, unless I'm able to work something out, I'm having trouble getting Thursday courtrooms --

MS. GRASSGREEN: All right. Well, I --

THE COURT: It's possible -- so, you would prefer to do January 11th, Friday, January 11th?

MS. GRASSGREEN: I guess I'm slightly concerned that we may need some time on a number of other matters. That will be the first time the committee would be appearing, and that might not be enough time, if we start at 11, to then be at the 341 at 2:30.

THE COURT: Well, we can -- you know, the only reason for not starting earlier is the people on the phone.

MS. GRASSGREEN: Right. Were the phone calls. I mean, I certainly would -- for convenience of creditors who might want to appear at that 341, it would be, I think, convenient if we did the January hearings at least contiguous, so if Thursday isn't available, perhaps we start a little earlier, and if we don't finish we'll have to --

THE COURT: Thursday -- I don't have my calendar, but I -- two Thursday a month, starting in January, I'm inheriting the Chapter 13 calendar. I have not had that. And those hearings are already scheduled for all of next year, and it's two Thursdays a month. And I know that Thursday, January -- it -- it has to be a Chapter 13, Thursday, the 10th, is a Chapter 13th day. That's why I picked Thursday, January -- I had originally hoped for Thursday, January 17th. So, I know that Thursday, January 10th is not available.

MS. GRASSGREEN: Well, Your Honor, perhaps what we can do is, you know, either use the 11th, or the 18th, and, you know, maybe we're back here on the 14th, once the committee is appointed, and we'll have a better idea --

THE COURT: I'd like to minimize --

MS. GRASSGREEN: -- to know -- oh, actually, I -- January, it's the December hearing I was concerned about going on. I would think that the morning would be fine on the 11th,

and that would, I would think, be convenient for most parties who would be traveling for the 341, and --

THE COURT: Let's see if we could start at ten o'clock. Most people are going to be here, or otherwise --

MS. GRASSGREEN: I think so, Your Honor.

THE COURT: -- people can get up earlier -- still earlier in California.

MS. GRASSGREEN: I think the key constituents, and by that time we'll have a committee, will likely be here in person for the 341 if they have an interest --

UNIDENTIFIED ATTORNEY: January 11th at?

THE COURT: Well, I'm going to have to -- I'm going to enter a pre-trial order that sets the dates for the December 14th and assuming, when I get back to chambers, that January 11th works, for January 11th. I'll enter an order that will cover both of those dates, and I'm going to include in the order the deadline for filing motions to be heard on those days. And it's going to be -- I'm going to use the 17 days, rather than the 14 days that's in the case management order. But it will have the specific days for filing motions, filing objections, and replies to be heard on Friday, January 11th. I'm probably going to put that extra day so that motions will get filed on Monday, and --

MS. GRASSGREEN: Thank you, Your Honor. And we will abide by that. And the only matter that I could see that might

require a separately set hearing before year end is if we do have a sale of the Stone mitigation property, and it needs to close, but we will adjust that with your chambers if and when it comes up.

The other housekeeping matter, I just wanted to go back a bit to the employee benefits motion, because there was a bit of discussion about the workers' comp, and I was not clear on what --

THE COURT: And Mr. Morrissey said it was de minimus, and I --

MS. GRASSGREEN: -- and I wasn't clear on what the Court's ruling was with respect to that, so I did want to clarify so that we make sure that we're acting appropriately.

THE COURT: I'm going to sign the order you submitted. I'm not trying to be vague about it, but I think Mr. Morrissey made the point it was quite a de minimus amount, and so, if for no other reason than I think I deem it to be necessary to do it, given the de minimus amount, you have the authority to go ahead and pay that.

MS. GRASSGREEN: Thank you, Your Honor.

THE COURT: Mr. Morrissey?

MR. MORRISSEY: Your Honor, just to clarify a little further, and I have no problem with what the Court just said, as counsel and I discussed yesterday, if the committee has problems with certain aspects of that order in terms of the

practices of the debtor, in terms of the famous gym memberships, for example, those can always be revisited later on.

THE COURT: They can.

MS. GRASSGREEN: Yes, Your Honor. We'll be happy to address that. I will say I think we suffered a little bit from over disclosure because I think it's pretty common for corporate employers to offer gym memberships, because it generally reduces the healthcare costs. But they are not often highlighted, as we did in our motion, but we will accept whatever is appropriate with the gym memberships. Thank you for your time today.

THE COURT: Thank you very much. Anything else anybody wishes to raise today? All right. So, we're adjourned. We do have a hearing scheduled for Tuesday at 2:00. If you advise my chambers that we don't need that hearing date, we can go ahead and adjourn that. I'll enter an --

(C.D. Off)

THE COURT: -- the larger cases without out of town counsel. That's been what I have been doing. I actually shortened the usual time that you have to call -- to advise Court Call of participation because there was so little time to do that. When I go back to chambers we'll look at what the usual is. We'll advise you about it. And just as a standing -- it's not in that case management order you submitted, but

you ought to consider as a standard practice all of our courtrooms have telephone capability. I know you had, I think, had a footnote in your submission about it. So, we'll go ahead and do that. You should just, as a matter of course, post the notice about when -- and maybe you can talk with one of my law clerks this afternoon, we usually require a little more notice to Court Call before, and I think have you post the information about the call in and all that a day earlier or so than you had to do for this hearing because the time was so compressed. Ms. Bove, you can talk with my law clerks and work that out.

MS. BOVE: Okay. I will, Your Honor.

THE COURT: Okay. Anything else anybody wishes to --

MS. GRASSGREEN: Perhaps we could include in our notices of motions that anyone may appear telephonically on a day's notice in our standard form.

THE COURT: Yes. But in the order I entered, and it said anyone who is not, I think, the principal spokesperson, that's not the precise language, either in support of or in opposition, if someone is the moving party, if there are some extraordinary reasons that can't be here, they should call my chambers and request the ability to participate by phone. The sound system -- because they just are not perfect, and it's difficult listening to any sort of lengthy argument in support of or in opposition to a motion. So, if somebody is -- I think I put some language in the order that was entered. It's the

usual language I use. If someone in California, because of conflicting Court hearings, can't be here for a hearing, and they're the moving party, they should call my chambers and explain why, and I'll consider permitting them to do it. But it just -- it's a problem if the principal, if the lawyers making the principal arguments in support of or in opposition to a motion are not in the courtroom.

MS. GRASSGREEN: Thank you, Your Honor.

MR. WITTER: Your Honor?

THE COURT: Yes?

MR. WITTER: This is Art Witter (phonetic). I'm one of the California counsel on the line. I'm sure there's many of us that are on the line this morning, and we appreciate the Court's indulgence to allow us to appear by telephone. There's been quite a bit of discussion among the California entities as to the propriety of the venue, and I'm asking the Court if the Court would like to set a special hearing, or how the Court would like to handle motions brought by the California contractors, the creditors, for a change in venue or a challenge to the filing on the basis it's a new debtor syndrome, bad faith filing, and venue shopping. We may want to bring that motion before a creditors' committee is formally established, and I know the Court's got a tight schedule, and so, I haven't -- we're before this Court, and I apologize if I've offended you by asking these questions, but if there's a

procedure that we could announce for the motion, or if you'd like to specially set it, I'd appreciate the Court's instruction on that.

THE COURT: Set it for Friday, December 14th -- if you're going to file the motion, file it no later than Monday, November 26th, and objections to the motion will be due Thursday, December 6th. The replies Tuesday, December 11th, and you will put it on for the omnibus motion day on Friday, December 14th, at 11 o'clock.

MR. WITTER: Thank you very much, Your Honor.

MS. GRASSGREEN: Your Honor, is there an expectation that that would be an evidentiary hearing? Or, I guess I'll ask the proposed proponent?

THE COURT: Hard for me to know without seeing the motion.

MR. COHEN: I'm sorry, Your Honor. This is Marc Cohen. And you're right about -- Kaye Scholer in Los Angeles -- you're right, it's hard to hear. The de bene motion that Mr. Witter indicated was to be filed by November 26th, and the hearing on December 14th? When would the debtor or other responses due on that?

THE COURT: This is basically the schedule you'll see in an order I'll enter for the December 14th hearing, that the deadline for filing motions, Monday, November 26th. The deadline for objections, Thursday, December 6th. Deadline for

replies, December 11th. And I think it's under their order it's noon on December -- it would be noon on December 11th for the replies.

MR. COHEN: Thank you very much, Your Honor. Mr. Morrissey, did you --

MR. MORRISSEY: The smallest of points, Your Honor. When Your Honor said noon on December 7th, is that Eastern Time, or Pacific Time?

THE COURT: I'm operating on Eastern Time, Mr. Morrissey.

MR. MORRISSEY: Very well.

THE COURT: And everybody should take note, I did -- the case management order has basically been modified with language I added that courtesy copies get filed as soon as practicable after the paper is filed. So --

MS. GRASSGREEN: Thank you, Your Honor.

THE COURT: Okay. We're adjourned. Thank you very much, counsel.

MS. GRASSGREEN: Thank you.

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C E R T I F I C A T I O N

We, PATRICIA KONTURA and TAMMY DeRISI, court approved transcribers, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

Patricia Kontura

PATRICIA KONTURA

Tammy DeRisi Date: December 5, 2007

TAMMY DeRISI

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